

CALIFORNIA INSTITUTE OF TECHNOLOGY JET PROPULSION LABORATORY

GENERAL PROVISIONS: FIXED-PRICE CONSTRUCTION CONTRACT

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GENERAL PROVISIONS CANNOT BE ALTERED WITHOUT NASA APPROVAL

The following attachments are incorporated into the General Provisions. Submission of an offer and beginning performance constitute certification and recertification per Form JPL 2892.

- Release of Information, Form JPL 1737
- Notification to Prospective Contractors of JPL's Ethics Policies and Anti-Kickback Hotline, Form JPL 2385
- Certifications, Form JPL 2892
- Asbestos Notification, Form JPL 2895
- Notice of Potential Tax Withholding

AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION [T&MC, FPC – 8/01] [FAR 52.222-27 - 2/99]

(The provisions of this Article shall be applicable only if the amount of this Contract exceeds \$10,000. Work performed outside the United States by employees recruited outside the United States is exempt from the requirements of this Article.)

(a) Definitions.

- (1) "Covered area," as used in this Article, means the geographical area described in the solicitation for this Contract.
- (2) "Director," as used in this Article, means Director, Office of Federal Contract Compliance Programs (OFCCP), United States Department of Labor, or any person to whom the Director delegates authority.
- (3) "Employer identification number," as used in this Article, means the Federal Social Security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.
- (4) "Minority," as used in this Article, means:
 - (A) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification);
 - (B) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);
 - (C) Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and
 - (D) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).
- (b) If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of \$10,000 shall include this Article and the Notice containing the goals for minority and female participation stated in the solicitation for this Contract.
- (c) If the Contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Contractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Contractor or subcontractor participating in an approved plan is also required to comply with its obligations under the "Equal Opportunity" Article, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other Contractors or subcontractors toward a goal in an approved plan does not excuse any Contractor's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.
- (d) The Contractor shall implement the affirmative action procedures in subparagraphs (g)(1) through (16) of this Article. The goals stated in the solicitation for this Contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform progress toward its goals in each craft.
- (e) Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer minorities or women shall excuse the Contractor's obligations under this Article, Executive Order 11246, as amended, or the regulations thereunder.
- (f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- (g) The Contractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with this Article shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:

- (1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each construction project. The Contractor shall ensure that foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.
- (2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- (3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Contractor by the union or, if referred back, not employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken.
- (4) Immediately notify the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- (5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph (g)(2) above.
- (6) Disseminate the Contractor's equal employment policy by:
 - (A) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its Contract obligations;
 - (B) Including the policy in any policy manual and in collective bargaining agreements;
 - (C) Publicizing the policy in the company newspaper, annual report, etc.;
 - (D) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and
 - (E) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.
- (7) Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all on-site supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- (8) Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other contractors and subcontractors with which the Contractor does or anticipates doing business.
- (9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

- (10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after- school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's workforce.
 - (11) Validate all tests and other selection requirements where required under 41 CFR 60-3.
 - (12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.
 - (13) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Contractor's obligations under this Contract are being carried out.
 - (14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - (15) Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - (16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's equal employment policy and affirmative action obligations.
- (h) The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs (g)(1) through (16). The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the Contractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs (g)(1) through (16), provided the Contractor:
- (1) Actively participates in the group;
 - (2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;
 - (3) Ensures that concrete benefits of the program are reflected in the Contractor's minority and female workforce participation;
 - (4) Makes a good-faith effort to meet its individual goals and timetables; and
 - (5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
- (i) A single goal for minorities and a separate single goal for women shall be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.
- (j) The Contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- (k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.
- (l) The Contractor shall carry out such sanctions and penalties for violation of this Article and of the "Equal Opportunity" Article, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this Article and Executive Order 11246, as amended.
- (m) The Contractor in fulfilling its obligations under this Article shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) above, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this Article, the Director shall take action as prescribed in 41 CFR 60-4.8.

- (n) The Contractor shall designate a responsible official to:
- (1) Monitor all employment-related activity to ensure that the Contractor's equal employment policy is being carried out;
 - (2) Submit reports as may be required by the Government; and
 - (3) Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.
- (o) Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI, A-E – 8/01]
[FAR 52.222-36 - 4/84]

(This Article applies to contracts over \$2,500, unless the work is performed outside the United States by employees recruited outside the United States.)

Incorporate by reference FAR 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).

AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI, A-E – 4/99] [FAR 52.222-35 - 4/98]

(This Article applies to contracts over \$10,000, unless the work is performed outside the United States by employees recruited outside the United States.)

Incorporate by reference 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212).

ANTI-KICKBACK PROCEDURES [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 4/99] [FAR 52.203-7 – 7/95]

(a) Definitions.

- (1) "Kickback," as used in this Article, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.
- (2) "Person," as used in this Article, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.
- (3) "Prime contract," as used in this Article, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.
- (4) "Prime Contractor," as used in this Article, means a person who has entered into a prime contract with the United States.
- (5) "Prime Contractor employee," as used in this Article, means any officer, partner, employee, or agent of a prime contractor.
- (6) "Subcontract," as used in this Article, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.
- (7) "Subcontractor," as used in this Article, (i) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (ii) includes any person who offers to furnish or furnishes general supplies to the prime contractor or a higher-tier subcontractor.
- (8) "Subcontractor employee," as used in this Article, means any officer, partner, employee, or agent of a subcontractor.

- (b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from:
- (1) Providing or attempting to provide or offering to provide any kickback;
 - (2) Soliciting, accepting, or attempting to accept any kickback; or
 - (3) Including, directly or indirectly, the amount of any kickback in the Contract price charged by a prime Contractor to the United States or in the Contract price charged by a subcontractor to a prime contractor or higher-tier subcontractor.
- (c) (1) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this Article may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.
- (2) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this Article.
- (3) The Institute may (i) offset the amount of the kickback against any monies owed under the Contract and/or (ii) direct that the Contractor withhold, from sums owed a subcontractor under the Contract, the amount of any kickback. JPL may order that monies withheld under subdivision (c)(3)(ii) of this Article be paid over to JPL unless JPL has already offset those monies under subdivision (c)(3)(i) of this Article. In either case, the Contractor shall notify JPL when the monies are withheld.
- (4) The Contractor agrees to incorporate the substance of this Article, including this subparagraph (c)(4), in all subcontracts under this Contract.

APPRENTICES AND TRAINEES [FPC, T&MC – 8/01] [FAR 52.222-9 - 2/88]

(Work performed outside the United States is exempt from the requirements of this Article.)

- (a) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (b) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every

trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (c) Equal Employment Opportunity. The utilization of apprentices, trainees and journeymen under this Article shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

ASBESTOS NOTIFICATION [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 2/00]

(This Article applies if any of the Contract effort will be performed in JPL-Pasadena buildings. Work performed outside the United States is exempt from the requirements of this Article.)

Contractor acknowledges receipt of the attached "Asbestos Notification," form JPL 2895, identifying JPL buildings containing asbestos and agrees to distribute the Notice to all its personnel prior to their commencing work in such buildings. Contractor agrees to coordinate with the JPL Safety Operations Section for special asbestos handling instructions to be given to all Contractor's personnel, including subcontractors' personnel, prior to their commencing work, if any, which could disturb asbestos in JPL-controlled buildings. The substance of this Article will be included in all subcontracts issued under this Article for work performed in JPL-Pasadena buildings.

ASSIGNMENT OF RIGHTS AND DELEGATION OF DUTIES [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 4/99]
[FAR 52.232-23(a) – 1/86]

- (a) The Contractor may assign its rights to be paid amounts due or to become due as a result of the performance of this Contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.
- (b) Any such assignment or reassignment shall be subject to the following conditions:
- (1) Any assignment or reassignment authorized under this provision shall cover all amounts payable under this Contract, and not paid as of (i) the effective date of assignment or (ii) the date JPL receives written notice of the assignment, whichever is later.
 - (2) No assignment may be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this Contract.
 - (3) Two copies of the notice of assignment, signed by the Contractor, shall be furnished to JPL, Attn: Accounts Payable.
 - (4) If a party other than the Contractor provides JPL with a notification that the amount due or to become due under this Contract has been assigned and that payment is to be made to the claimed assignee, JPL may withhold any payments which are due and payable under the Contract until JPL is furnished with either (i) verification or denial of assignment from the Contractor or (ii) reasonable proof that the assignment has been made.
 - (5) The Contractor shall not furnish or disclose to any assignee under this Contract any classified document (which term includes this Contract if access to classified material is authorized under this Contract) or information pertaining to classified work under this Contract unless JPL authorizes such action in writing.
 - (6) No assignment may be made which includes, either specifically or by implication, any delegation of the Contractor's duty to perform the services or provide the supplies required by this Contract unless such assignment and delegation is consented to by JPL in accordance with the provisions of paragraph (c) below.

- (c) The Contractor is prohibited, without prior written JPL consent, from delegating any part of the duties required of it by this Contract; provided, however, that nothing contained herein shall be deemed to prohibit the Contractor from placing purchase orders and subcontracts, subject, however, to the provision of this Contract entitled "Subcontracts." Delegation of duties without such consent is void.

AUDIT AND EXAMINATION OF RECORDS – NEGOTIATION [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 4/99]
[FAR 52.215-2 – 8/96]

(This provision is not applicable for procurements of \$100,000 or less, for commercial items, or for utility services at rates not exceeding those established to apply uniformly to the general public, plus any applicable reasonable connection charge.)

- (a) As used in this Article, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- (b) Examination of Costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable Contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the Contract.
- (c) Cost or Pricing Data. If the Contractor has been required to submit cost or pricing data in connection with pricing action relating to this Contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to:
- (1) The proposal for the Contract, subcontract, or modification;
 - (2) The discussions conducted on the proposal(s), including those related to negotiating;
 - (3) Pricing of the Contract, subcontract, or modification; or
 - (4) Performance of the Contract, subcontract, or modification.
- (d) Comptroller General.
- (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this Contract or a subcontract hereunder.
 - (2) This paragraph (d) may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
- (e) Reports. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (i) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (ii) the data reported.
- (f) Availability. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this Article, for examination, audit, or reproduction, until three years after final payment under this Contract, or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of FAR, and any corresponding implementing or supplementing provisions in the NFS, or for any longer period required by statute or by other Articles of this Contract. In addition:
- (1) If this Contract is completely or partially terminated, the records relating to the work terminated shall be made available for three years after any resulting final termination settlement; and
 - (2) Records relating to appeals under the Disputes clause of the Government Prime Contract, or if this Contract contains a "Disputes" Article, to appeals under such Article, or to litigation or the settlement of claims arising under or relating to this Contract, shall be made available until such appeals, litigation, or claims are finally resolved.

- (g) (1) The Contractor shall insert all of the provisions of this Article, including this paragraph (g), in all subcontracts under this Contract that exceed \$100,000, and:
 - (A) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
 - (B) For which cost or pricing data are required; or
 - (C) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.
- (2) The Article may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government Prime Contract.
- (h) If this is a cost-reimbursement contract with an educational or other nonprofit institution, the provisions of OMB Circular No. A-133, "Audits of Institutions of Higher Learning and Other Nonprofit Institutions," apply to this Contract.

AUTHORITY OF JPL REPRESENTATIVES [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 4/99]

- (a) No request, notice, authorization, direction or order received by the Contractor and issued either pursuant to a provision of this Contract, to a provision of any document incorporated in this Contract by reference, or otherwise, shall be binding upon either the Contractor or the Institute unless issued or ratified in writing by the JPL Negotiator, the Manager, Acquisition Division, JPL, or by representative(s) designated in writing by either of them. Designations of authorized representatives shall define the scope and limitations of the authorized representatives' authorities.
- (b) The Contractor shall immediately notify, in writing, the JPL Negotiator, or the Manager, Acquisition Division, JPL, whenever a request, notice, authorization, direction, or order has been received from a representative of JPL other than the JPL Negotiator, or the Manager, Acquisition Division, JPL, which, but for the lack of authorization on the part of the issuing JPL representative, would: (i) effect a change within the meaning of the "Changes" Article; (ii) increase or decrease the Contract amount or amount allotted to this Contract; or (iii) otherwise be the basis for assertion of a claim by the Contractor under any provision of the Contract.

AUTHORIZATION AND CONSENT [FP-NR&D, FPC – 4/99] [FAR 52.227-1 – 7/95]

- (a) The Government authorizes and consents to all use and manufacture, in performing this Contract or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by JPL under this Contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this Contract or (ii) specific written instructions given by JPL directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this Contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.
- (b) The Contractor agrees to include, and require inclusion of, this Article, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples and design or testing services expected to exceed \$100,000); however, omission of this Article from any subcontract, under or over \$100,000, does not affect this authorization and consent.

BADGES AND PASSES [T&MC, FPC – 4/99]

The Contractor is responsible for insuring that its personnel and subcontractor personnel, performing work under this Contract on Laboratory controlled premises, obtain from the JPL Security Group the required badges and passes, if any, authorizing admittance to the premises.

BANKRUPTCY [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 4/99] [FAR 52.242-13, 7/95]

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the Contract, written notification of the bankruptcy to the JPL negotiator responsible for administering the Contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy

petition was filed, and a listing of JPL contract numbers for all JPL contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract.

BONDS [FPC – 2/00]

(Work performed outside the United States is exempt from the requirements of this Article. Applies only to contracts expected to exceed \$100,000 in value.)

- (a) **Payment Bond.** If this Contract exceeds \$100,000, the Contractor agrees to furnish a payment bond with good and sufficient surety or sureties acceptable to JPL for the protection of persons furnishing material or labor in connection with the performance of the work under this Contract on a form acceptable to JPL. The penal sum of such payment bond shall be 100% of the original Contract amount, provided, however, that JPL may require an additional amount of bond in connection with work added to this Contract by modification.
- (b) **Performance Bond.** If the Contract price exceeds \$100,000, the Contractor further agrees to furnish a performance bond with good and sufficient surety or sureties acceptable to JPL in connection with the performance of work under this Contract on a form acceptable to JPL. The penal sum of such performance bond shall be 100% of the original Contract amount, provided, however, that JPL may require an additional amount of bond in connection with work added to this Contract by modification.
- (c) Any bonds required hereunder will be dated as of the same date as the notice of award, if any, or if none, the same as the date of the Contract and will be furnished by the Contractor to JPL at the same time the Contract is executed. Such bonds shall be in favor of the United States of America and the California Institute of Technology. Corporations executing any of the bonds as sureties must be among those appearing on the Treasury Department's list of approved sureties and must be acting within the limitations set forth therein.
- (d) If any surety upon any bond furnished in connection with this Contract becomes unacceptable to JPL or if any such surety fails to furnish reports as to its financial condition from time to time as requested by JPL, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interest of the Institute and the Government and of persons supplying labor or materials in the prosecution of the work contemplated by this Contract.

BUY AMERICAN ACT - CONSTRUCTION MATERIALS [T&MC, FPC – 2/00]

(If the Article entitled "Buy American Act-Supplies" exists in this contract, it is deleted and this Article is substituted therefor. Work performed outside the United States is exempt from the requirements of this Article.)

- (a) **Definitions.**
 - (1) "Components," as used in this Article, means those articles, materials, and supplies incorporated directly into construction materials.
 - (2) "Construction material," as used in this Article, means an article, material, or supply brought to the construction site for incorporation into the building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.
 - (3) "Designated country construction material," as used in this Article, means a construction material that (i) Is wholly the growth, product, or manufacture of a designated country (as defined at FAR25.401); or (ii) In the case of a construction material which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a designated country into a new and different construction material distinct from the materials from which it was transformed.
 - (4) "Domestic Construction material," as used in this Article, means (i) an unmanufactured construction material mined or produced in the United States, or (2) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the construction materials determined to be unavailable pursuant to subparagraph 25.202(a)(2) of the Federal Acquisition Regulation (FAR) shall be treated as domestic

- (5) "North American Free Trade Agreement (NAFTA) country," as used in this Article, means Canada or Mexico.
- (6) "NAFTA country construction material," as used in this Article, means a construction material that:
 - (A) Is wholly the growth, product, or manufacture of a NAFTA country; or
 - (B) In the case of a construction material which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different construction material distinct from the materials from which it was transformed.
- (b) (1) This clause implements the Buy American Act (41 U.S.C. 10a - 10d) and the Balance of Payments Program by providing a preference of domestic construction material. In addition JPL's Contracting Officer has determined that the Trade Agreements Act and the North American Free Trade Agreement (NAFTA) apply to this acquisition. Therefore, the Buy American Act and Balance of Payments Program restrictions are waived for designated country and NAFTA country construction materials.
- (2) Only domestic, designated country, or NAFTA country construction material shall be used in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.
- (3) The requirement in paragraph (b)(2) of this clause does not apply to the excepted construction material or components listed by the Government as follows:
 - (At this time, there are no excepted construction materials or components.)
- (4) Other foreign construction material may be added to the list in paragraph (b)(2) of this clause if the Government through JPL's Contracting Officer determines that:
 - (A) The cost would be unreasonable (the cost of a particular domestic construction material subject to the restrictions of the Buy American Act shall be determined to be unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent. For determinations of unreasonable cost under the Balance of Payments Program, a factor of 50 percent shall be used;
 - (B) The application of the restriction of the Buy American Act or Balance of Payments Program to a particular construction material would be impracticable or inconsistent with the public interest; or
 - (C) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.
- (c) Request for determination.
 - (1) Contractors requesting to use foreign construction material under paragraph (b)(4) of this Article shall provide adequate information for Government evaluation of the request for a determination regarding the inapplicability of the Buy American Act or Balance of Payments Program. Each submission shall include a description of the foreign and domestic construction materials, including unit of measure, quantity, price, time of delivery or availability, location of the construction project, name and address of the proposed contractor, and a detailed justification of the reason for use of foreign materials cited in accordance with paragraph (b)(4) of this Article. A submission based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this Article. The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).
 - (2) If the Government determines after contract award that an exception to the Buy American Act or Balance of Payments Program applies, the contract shall be modified to allow use of the foreign construction material, and adequate consideration shall be negotiated. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration shall not be less than the differential established in paragraph (b)(4)(i) of this Article.
 - (3) If the Government does not determine that an exception to the Buy American Act or Balance of Payments Program applies, the use of that particular foreign construction material shall be considered noncompliant with the Buy American Act or Balance of Payments Program.
- (d) For evaluation of requests under paragraph (c) of this Article based on unreasonable cost, the following information and any applicable supporting data based on the survey of suppliers shall be included in the request:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON

Item 1:

Foreign Construction Material:

Domestic Construction Material:

Item 2:

Foreign construction material:

Domestic construction material:

*[*Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]*

Note: Provide name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary. Include other applicable supporting information.

CERTIFICATION OF ELIGIBILITY [T&MC, FPC – 2/00]

(Work performed outside the United States is exempt from the requirements of this Article.)

- (a) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (b) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

CHANGES – CONSTRUCTION [FPC – 4/99] [FAR 52.243-4 – 8/87]

- (a) JPL may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a unilateral modification issued under this Article, make changes in the work within the general scope of the Contract, including but not limited to changes:
 - (1) In the specifications (including drawings and designs);
 - (2) In the method or manner of performance of the work;
 - (3) In the Government-owned, JPL-furnished facilities, equipment, materials, services, or site; or
 - (4) Directing acceleration in the performance of the work.
- (b) Subject to the provisions of the Article of this Contract entitled "Authority of JPL Representatives," any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from JPL that causes a change shall be treated as an order under this Article, provided, that the Contractor gives JPL written notice stating (i) the date, circumstances, and source of the order and (ii) that the Contractor regards the order as an order issued hereunder. Notwithstanding the foregoing, no order from JPL in a Technical Direction Memorandum (JPL 2084-S) and accepted thereon by the Contractor without exception shall be treated as an order under this Article.
- (c) Except as provided in this Article, no order, statement, or conduct of JPL shall be treated as a change under this Article or entitle the Contractor to an equitable adjustment.
- (d) If any change under this Article causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this Contract, whether or not changed by any such order, the Institute shall make an equitable adjustment and modify the Contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) above shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which JPL is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.
- (e) The Contractor must assert its right to an adjustment under this Article within 30 days after (i) receipt of a written unilateral modification under paragraph (a) above or (ii) the furnishing of a written notice under paragraph (b) above, by submitting to JPL a written statement describing the general nature and amount of the

proposal, unless this period is extended by JPL. The statement of proposal for adjustment may be included in the notice under paragraph (b) above.

- (f) JPL may require change order accounting whenever the estimated cost of a change or series of related changes exceeds \$50,000. The Contractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. The Contractor shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by JPL.
- (g) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this Contract.

CLEAN AIR AND WATER [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 8/01] [FAR 23.104 – 4/84; 52.223-2 -4/84]

(This Article does not apply to the use of facilities outside the United States. The Article applies to the Contract if it exceeds \$100,000 [or \$100,000 in one year for an indefinite delivery contract], or the facility to be used has been the subject of a conviction under the Air Act or Water Act and is listed by the EPA as a violating facility, and the acquisition is not otherwise exempt under FAR 23.104.)

Incorporate by reference FAR 52.223-2, Clean Air and Water (April 1984).

CLEANING UP [T&MC, FPC – 4/99]

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to JPL. Unless otherwise stated in this Contract, the time stated for completion of the work shall include cleaning-up time.

COMPLIANCE WITH COPELAND ACT REQUIREMENTS [T&MC, FPC – 2/00]

(Work performed outside the United States is exempt from the requirements of this Article.)

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Contract.

COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS [T&MC, FPC - 2/00]

(Work performed outside the United States is exempt from the requirements of this Article.)

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3 and 5 are hereby incorporated by reference in this Contract.

COMPLIANCE WITH EXPORT REGULATIONS [CT, FP-NR&D FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI – 5-00]

- (a) Hardware, software and related materials, including technical data, may be subject to U.S. export control laws, including the U.S. Export Administration Act, Arms Export Control Act, and their associated regulations, and may be subject to export or import regulations in other countries. Contractor agrees to strictly comply with all U.S. Export Control Regulations and acknowledges that, when applicable, it has the responsibility to obtain export licenses, or other export authority as may be required, for hardware, software, and related materials and services, including technical data, related to the performance of this Contract, which are in its possession or under its control.
- (b) JPL's NASA Contracting Officer is required to provide reports to NASA headquarters on the status and location of government property which has left United States Territory. Contractor will not export any government property without prior approval from the NASA CO through the JPL negotiator.
- (c) (1) The International Traffic in Arms Regulation (ITAR) 22 CFR Parts 120 to 130 inclusive, and Export Administration Regulation (EAR) 15 CFR parts 730 to 774 inclusive, restrict foreign national access to technological information. This information is available on JPL Web Space, in unpublished JPL documents, through technical conversations with JPL employees, and through visual inspection of JPL hardware. For the purpose of this clause, foreign nationals are defined as all individuals in the United States or overseas who are not U.S. Citizens, holders of U.S. green cards, or holders of political asylum papers issued by the U.S. Department of State.
- (2) The Contractor shall not allow access by any foreign national to: JPL material which reveals technology, financial information, or business strategy information, and to JPL internal Web Space in performance of

this Contract, without prior written approval by JPL Security, the JPL Network and Computer Security Group, and the JPL International and Legislative Affairs Office through the JPL Negotiator.

- (d) Contractor agrees to insert this clause, including this paragraph, in all subcontracts which could involve: an export as defined in the ITAR and EAR, subcontractor employee access to JPL Web Space, or subcontractor employee access to JPL material which reveals technology, financial information, or business strategy information.

COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT [FP-NR&D, FP-R&D, LH-T&M, T&MC, FPC, A-E - 4/00]

(Work performed outside the United States is exempt from the requirements of this Article.)

- (a) Contractor agrees to comply with the Americans with Disabilities Act (42 U.S.C. 12101, et. seq.) and all implementing regulations.
- (b) Contractor agrees that it will be responsible to the Government and the Institute for, and will indemnify and hold harmless the Government and the Institute, its trustees, officers, and employees from any loss, cost, damage, expense or liability or suit therefor, by reason of actual or alleged property damage or personal injury of whatever kind or character, arising out of, or in connection with performance of the requirements of paragraph (a) above by the Contractor or any of its subcontractors, however the same may be caused, excepting only such loss, cost, damage, expense or liability attributable to the sole or contributory active negligence of the Government or of the Institute, its trustees, officers, or employees.
- (c) Contractor agrees to insert this Article, including (c), in all subcontracts and purchase orders hereunder.

COMPOSITION OF CONTRACTOR [FPC – 4/99]

If the Contractor hereunder is composed of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

CONTRACT TERMINATION – DEBARMENT [T&MC, FPC – 2/00]

(Work performed outside the United States is exempt from the requirements of this Article.)

A breach of the Contract Articles entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act - Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Act Requirements," "Subcontracts (Labor Standards)," "Compliance with Davis-Bacon and Related Act Regulations," or "Certification of Eligibility," may be grounds for termination of the Contract, and for debarment as a contractor as provided in 29 CFR 5.12.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 8/01] [FAR 22.305 - 7/95; 52.222-4 - 7/95]

(Work performed outside the United States is exempt from the requirements of this Article.)

- (a) This provision is not applicable to contracts for supplies, materials, or articles ordinarily available in the open market, contracts for transportation by land, air, or water, or for the transmission of intelligence, contracts of \$100,000 or less, contracts to be performed solely within a foreign country or within a territory under United States jurisdiction other than a state, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, and Johnson Island, and contracts (or portions of contracts) for supplies in connection with which any required services are merely incidental to the contract and do not require substantial employment of laborers or mechanics, exempt under regulations of the Secretary of Labor (29 CFR 5.15), contracts requiring work to be done solely in accordance with the Walsh-Healey Public Contract Acts, and contracts for commercial items.
- (b) FAR clause 52.222-4 (July 1995) is hereby incorporated by reference in toto, except that:
 - (1) The words "JPL negotiator or JPL's Contracting Officer" shall be substituted for the words "Contracting Officer" wherever they appear;
 - (2) The word "Contractor" shall be substituted for the words "Prime Contractor" wherever they appear; and
 - (3) The words "with JPL" shall be substituted for the words "Federal Contract with the same Prime Contractor" wherever they appear.

CONTRACTOR AND SUBCONTRACTOR COST OR PRICING DATA, OR INFORMATION OTHER THAN COST OR PRICING DATA AND PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, A-E – 8/01] [FAR 15.403-4 - 10/00; 52.215-11 - 10/97; 52.215-12 - 10/97; 52.215-13 - 10/97; 52.215-20 - 10/97; 52.215-21 - 10/97]

(This Article is applicable if either the basic Contract or any modification exceeds \$550,000.)

(a) Contractor Cost or Pricing Data.

(1) Whenever the negotiated price of the basic Contract, or the negotiated price of any change, or other modification to this Contract is expected to exceed \$550,000, the Contractor agrees to furnish the Institute certified cost or pricing data, unless a waiver applies or a determination is made that an exception applies (the price is based on adequate price competition, prices set by law or regulation, or the contract is for a commercial item). Whenever certified cost or pricing data are required, the Contractor agrees to furnish the data in the format requested by JPL or if JPL does not so specify, per Table 15-2 of FAR 15.408 and agrees to submit the JPL certificate form JPL 2496 or equivalent as soon as practicable after agreement on price but before award.

(2) Exceptions to Cost or Pricing Data.

(A) (i) Basic Contracts. In lieu of submitting cost or pricing data for the basic Contract, offerors may submit a written request for exception by submitting the information described under paragraph (B), below.

(ii) Contract Modifications. In lieu of submitting cost or pricing data for modifications under this Contract, for price adjustments expected to exceed \$550,000 on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described under paragraph (B), below.

(iii) JPL may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(B) The relevant part of the following information is to be submitted when requesting an exception:

(i) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include:

a. For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.

b. For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.

c. For items included on an active Federal Supply Service Multiple Award Schedule or any other Federal Government contract, proof that an exception has been granted for the schedule item.

(iii) Information on modifications of contracts or subcontracts for commercial items. If (i) the original Contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition, or prices set by law or regulation, or was a contract or subcontract for a commercial item; and (ii) the modification (to the Contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the Contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

- (C) The Offeror/Contractor grants JPL or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Offeror's/Contractor's determination of the prices to be offered in the catalog or marketplace.

(b) Subcontractor Cost or Pricing Data.

- (1) Before awarding any subcontract expected to exceed \$550,000 when entered into, or before pricing any subcontract modification involving a pricing adjustment expected to exceed \$550,000, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the subcontract or modification is eligible for an exception listed in paragraph (a), above.
- (2) The requirement for obtaining certified cost or pricing data with respect to any subcontract change or other modification does not apply to any subcontract change or modification, at any tier, where this Contract is a firm fixed-price or firm fixed-price with escalation contract unless such change or other modification results from a Contract change or other modification to this Contract, nor does it apply to a subcontract change or other modification, at any tier, where this Contract is not firm fixed-price or firm fixed-price with escalation, unless the price for such change or modification becomes reimbursable under this Contract.
- (3) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR Part 15, and any corresponding implementing or supplementing provisions in the NFS, that, to the best of its knowledge and belief, the data submitted under subparagraph (b)(1) above were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.
- (4) In each subcontract that exceeds \$550,000 when entered into, the Contractor shall insert either:
 - (A) The substance of this Article, including this paragraph (4), if paragraph (b)(1) above requires submission of cost or pricing data for the subcontract; or
 - (B) The substance of the clause at FAR 52.215-13, "Subcontractor Cost or Pricing Data - Modifications," including any corresponding implementing or supplementing provisions in the NFS.

(c) Price Reduction for Defective Cost or Pricing Data.

- (1) If any price, including profit or fee, negotiated in connection with this Contract, or any cost reimbursable under this Contract, was increased by any significant amount because (i) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (ii) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (iii) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the Contract shall be modified to reflect the reduction.
- (2) Any reduction in the Contract price under paragraph (1) above due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (i) the actual subcontract or (ii) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.
- (3) (A) If the Contracting Officer determines under paragraph (1) of this Article that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:
 - (i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the Contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
 - (ii) The Institute should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of JPL.
 - (iii) The Contract was based on an agreement about the total cost of the Contract and there was no agreement about the cost of each item procured under the Contract.

- (iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- (B) (i) Except as prohibited by subdivision (c)(3)(B)(ii) of this Article, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a Contract price reduction if:
 - a. The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and
 - b. The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data and that the data were not submitted before such date.
- (ii) An offset shall not be allowed if:
 - a. The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or
 - b. The Government proves that the facts demonstrate that the Contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.
- (4) In the event of a disagreement between the Contracting Officer and the Contractor with respect to a question of fact involved in the Contracting Officer's determination to reduce the price of this Contract, the Contractor may, subject to the prior approval of the Institute, which approval will not be unreasonably withheld, process such disagreement as a dispute to the extent that it may be entitled to do so under the provisions of the Prime Contract.
- (d) If any reduction in the Contract price under this Article reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall indemnify the Institute for costs incurred by the Institute involved in repayments to the Government resulting from the Contractor's defective pricing including:
 - (1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Institute at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
 - (2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

CONTRACTOR RECRUITING ACTIVITY [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC – 2/00]

(Work performed outside the United States is exempt from the requirements of this Article.)

Except as may be specifically authorized by JPL in writing, during the performance of this Contract the Contractor shall refrain from engaging in any activity related to employment recruiting on any of the premises of JPL.

DAVIS-BACON ACT [T&MC, FPC – 2/00]

(This Article applies if the amount of the Contract is in excess of \$2,000 for construction within the United States. Work performed outside the United States is exempt from the requirements of this Article.)

- (a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this Article; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the Article entitled "Apprentices and Trainees." Laborers or mechanics performing work in more than one classification may be

compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (b) of this Article) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- (b) (1) Except with respect to helpers, as defined in FAR 22.401, the Institute shall require that any class of laborers or mechanics, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Institute shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:
 - (A) The work to be performed by the classification requested is not performed by a classification in the wage determination.
 - (B) The classification is utilized in the area by the construction industry.
 - (C) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
 - (D) With respect to helpers, such a classification prevails in the area in which the work is performed.
- (2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Institute agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Institute to the Contracting Officer for transmittal to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington DC 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
- (3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Institute do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Institute shall submit the question to the Contracting Officer, who shall refer for determination the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
- (4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (b)(2) and (b)(3) of this Article shall be paid to all workers performing in the classification under this Contract from the first day on which work is performed in the classification.
- (c) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

DEFAULT [FPC – 8/01] [FAR 52.249-10 - 4/84]

- (a) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this Contract including any extension, or fails to complete the work within this time, JPL may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, JPL may take over the work and complete it by Contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to JPL or the Government resulting from the Contractor's refusal or failure to complete the work within the specified

time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by JPL in completing the work.

- (b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this Article, if:
 - (1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the Government in either its sovereign or contractual capacity, (iii) acts of another Contractor in the performance of a contract with JPL, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and
 - (2) The Contractor, within 10 days from the beginning of any delay (unless extended by JPL), notifies JPL in writing of the causes of delay. JPL shall ascertain the facts and the extent of delay. If, in the judgment of JPL, the findings of fact warrant such action, the time for completing the work shall be extended.
- (c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued pursuant to the Article of this Contract entitled "Termination for Convenience."
- (d) The rights and remedies of JPL in this Article are in addition to any other rights and remedies provided by law or under this Contract.

DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 4/99]
[FAR 52.211-15 – 9/90]

Incorporate by reference FAR 52.211-15, Defense Priority and Allocation Requirements.

DEFINITIONS [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, A-E – 4/99] [FAR 52.202-1 – 10/95]

As used throughout this Contract, the following terms shall have the meanings set forth below:

- (a) The term "Administrator" means the Administrator or Deputy Administrator of the National Aeronautics and Space Administration.
- (b) The term "commercial component" means any component that is a commercial item.
- (c) The term "commercial item" means (see related term "nondevelopmental item," below):
 - (1) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that:
 - (A) Has been sold, leased, or licensed to the general public; or
 - (B) Has been offered for sale, lease, or license to the general public;
 - (2) Any item that evolved from an item described in paragraph (c)(1) of this Article through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a solicitation;
 - (3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (2) of this Article, but for:
 - (A) Modifications of a type customarily available in the commercial marketplace; or
 - (B) Minor modifications of a type not customarily available in the commercial marketplace made to meet JPL or Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;
 - (4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this Article that are of a type customarily combined and sold in combination to the general public;

- (5) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (c)(1), (2), (3), or (4) of this Article, and if the source of such services:
 - (A) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and
 - (B) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;
 - (6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;
 - (7) Any item, combination of items, or service referred to in subparagraphs (c)(1) through (6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or
 - (8) A nondevelopmental item, if the procuring activity determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments (see definition below).
- (d) The term "component" means any item supplied as part of an end item or of another component.
 - (e) The term "contract amount" means the Contract price, the estimated cost and fee, if any, or the ceiling price of the Contract.
 - (f) The term "Contracting Officer" means the Government Contracting Officer for the Prime Contract. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
 - (g) The term "Contractor" means the selling party to this Contract/Order with the California Institute of Technology (the Institute)/JPL being the buying party. The "Contractor" is the first tier subcontractor under the NASA Prime Contract between NASA and the Institute/JPL.
 - (h) (1) The term "FAR" means the Federal Acquisition Regulation as in effect on the date of this Contract, unless otherwise indicated.
 - (2) Any reference to the Contract Disputes Act is meant to refer to the Disputes provision in this Contract if any.
 - (i) The term "Government" means the Government of the United States of America, unless the context is otherwise.
 - (j) The term "Government-furnished property (GFP)" includes JPL-furnished, Government-owned property.
 - (k) The term "Institute" means the California Institute of Technology as a party to this Contract.
 - (l) The term "JPL" means the Jet Propulsion Laboratory as the organizational element of the Institute having responsibility for administration of this Contract. The rights of JPL under this Contract are the rights of the California Institute of Technology as a party to this Contract.
 - (m) The term "JPL negotiator" means the individual authorized to issue and administer this Contract for JPL.
 - (n) The term "NASA" means the National Aeronautics and Space Administration.
 - (o) The term "NFS" means the NASA FAR Supplement as in effect on the date of this Contract, unless otherwise indicated.
 - (p) The term "nondevelopmental item" means:
 - (1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;
 - (2) Any item described in paragraph (p)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring activity; or

- (3) Any item of supply being produced that does not meet the requirements of paragraph (p)(1) or (2) solely because the item is not yet in use.
- (q) The term "person" means any individual, partnership, corporation, association, institution or other entity.
- (r) The term "Prime Contract" means the Contract between the Institute and NASA for the United States of America (herein called the Government),.
- (s) The term "Schedule" means the statements in the order/contract, including statement of work, description of items to be supplied, delivery dates, special provisions, options and any other statements excluding the General Provisions (the term "General Provisions" includes any "Additional General Provisions"), and any proposals, specifications or other documents or provisions which are made a part of this Contract by reference or otherwise.
- (t) The term "subcontract," as used in this Contract, includes, but is not limited to, purchase orders under this Contract.
- (u) The terms "United States" or "U.S." mean the United States of America.

DIFFERING SITE CONDITIONS [FPC – 8/01] [FAR 52.236-2 - 4/84]

- (a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to JPL of (i) subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract, or (ii) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the Contract.
- (b) JPL shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this Contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this Article and the Contract modified in writing accordingly.
- (c) No request by the Contractor for an equitable adjustment to the Contract under this Article shall be allowed, unless the Contractor has given the written notice required by paragraph (a) above.
- (d) No request by the Contractor for an equitable adjustment to the Contract for differing site conditions shall be allowed if made after final payment under this Contract.

DISPUTES CONCERNING LABOR STANDARDS [T&MC, FPC – 2/00]

(Work performed outside the United States is exempt from the requirements of this Article.)

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Disputes arising out of the labor standards provisions of this Contract shall be resolved in accordance with those procedures. Disputes within the meaning of this Article include disputes between the Contractor (or any of its subcontractors) and the Institute, the National Aeronautics and Space Administration, the U.S. Department of Labor, or the employees or their representatives.

DRUG-FREE WORKPLACE REQUIREMENTS [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI, A-E – 4/99] [FAR 52.223-6 – 1/97]

The Contractor agrees to inform all Contractor personnel, prior to their first entrance upon JPL premises, that JPL's policy is to fully comply with the requirements of the Drug-Free Workplace Act and that Contractor personnel are required to comply with JPL's policy of maintaining a drug-free workplace.

ELECTRICAL EQUIPMENT ACQUISITION [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI – 4/99]

(This Article is applicable if the Contract involves acquisition of off-the-shelf electrical equipment for delivery to or use by JPL or its designees.)

The electrical equipment being provided by the Contractor under this Contract shall be listed by Underwriters Laboratory, Factory Mutual Insurance Association, Canadian Standards Association, or similar organization of recognized standing. In the event that the equipment does not carry an appropriate approval, the individual components making up the item must be listed. Proof of listing shall be provided with delivery of the equipment in the form of accompanying data or labels. Any item not conforming to these requirements may be returned to the Contractor at the Contractor's expense. The Contractor agrees to require subcontractors, if any, which supply electrical equipment for delivery to or use by JPL or its designees to comply with this Article.

EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 4/99] [FAR 52.222-37 – 1/88]

(This Article is applicable if this Contract (and any subcontract) is for \$10,000 or more, unless exempted by rules, regulations, or orders of the Secretary of Labor.)

Incorporate by reference FAR 52.222-37, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.

ENVIRONMENTAL COMPLIANCE [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 4/99] [FAR 52.223-11 – 6/96; 52.223-12 - 5/95]

(This Article is applicable to all contracts to be performed at least partially within the United States, its possessions, and Puerto Rico.)

- (a) **Environmental Compliance.** Environmental controls shall be in accordance with all applicable Federal, State and local regulatory requirements and in accordance with all applicable Executive Orders of the President. In addition the contractor shall comply with the provisions set forth below.
- (b) The Contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.
- (c) (1) **Definition.** "Ozone-depleting substance", as used in this clause, means any substance designated as Class I by the Environmental Protection Agency (EPA) (40 CFR Part 82), including but not limited to chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or any substance designated as Class II by EPA (40 CFR Part 82), including but not limited to hydrochlorofluorocarbons.
- (2) The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR Part 82, Subpart E, as follows:

WARNING

Contains (or manufactured with, if applicable) (*)_____, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

(* *The Contractor shall insert the name of the substance(s)*)

EQUAL OPPORTUNITY [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI, A-E – 8/01] [FAR 52.222-26 – 4/84]

(The following Article is applicable unless this Contract is exempt under the rules, regulations, and relevant orders of the Secretary of Labor issued under Executive Order 11246, as amended; for example, work performed outside the United States by employees recruited outside the United States is exempt from the requirements of this Article. If, during any 12-month period [including the 12 months preceding the award of this Contract], the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with FAR 52.222-26 during performance of this Contract. Upon request, the Contractor shall provide information necessary to determine the applicability of this Article.)

Incorporate by reference FAR 52.222-26, Equal Opportunity (E.O. 11246).

FACSIMILE COPIES ACCEPTABLE [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI, A-E – 4/99]

The parties agree that facsimile (fax) copies of contract documents are just as binding as originally executed documents.

FEDERAL, STATE, AND LOCAL TAXES [FP-NR&D, FP-R&D, FPC, A-E – 4/99] [FAR 52.229-3 - 1/91]

- (a) Items of tangible personal property to be delivered under this Contract are for resale to the United States Government (California Resale Certificate No. SR AP 17-006226).
- (b) FAR 52.229-3 is hereby incorporated by reference, except that the letters "JPL" shall be substituted for the words "the Contracting Officer" and the words "the Government" wherever they appear.

GOVERNMENT PROPERTY [FP-NR&D, FP-R&D, LH-T&M, T&MC, FPC, A-E – 4/99] [FAR 52.245-4 – 4/84]

- (a) JPL shall deliver to the Contractor, at the time stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the delivery or performance schedule, the Government-owned property described as JPL-furnished property in the Schedule or specifications. If that property, suitable for its intended

use, is not delivered to the Contractor, JPL shall equitably adjust affected provisions of this Contract in accordance with the Changes Article when:

- (1) The Contractor submits a timely written request for an equitable adjustment; and
 - (2) The facts warrant an equitable adjustment.
- (b) Title to JPL-furnished property shall remain in the Government. The Contractor shall use the JPL-furnished property only in connection with this Contract. The Contractor shall maintain adequate property control records in accordance with sound industrial practice and will make such records available for JPL or Government inspection at all reasonable times.
- (c) Upon delivery of JPL-furnished property to the Contractor, the Contractor assumes the risk and responsibility for its loss or damage, except:
- (1) For reasonable wear and tear;
 - (2) To the extent property is consumed in performing this Contract; or
 - (3) As otherwise provided for by the provisions of this Contract.
- (d) Upon completing this Contract, the Contractor shall follow the instructions of JPL regarding the disposition of all JPL-furnished property not consumed in performing this Contract or previously delivered to JPL. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by JPL. The net proceeds of any such disposal shall be credited to the Contract price or shall be paid as directed by JPL.
- (e) If this Contract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "JPL-furnished" (wherever they appear in this Article) shall be construed as "United States Government" and "United States Government-owned/JPL-furnished," respectively.
- (f) If JPL-furnished property has been provided to the Contractor under this Contract, the Contractor shall submit NASA Form 1018, "The Report of Government-Owned/Contractor-Held Property" (or equivalent) (or a negative report, if applicable), to JPL annually (date to be determined by JPL).

HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI – 4/99] [FAR 52.223-3 – 1/97, Alt. I – 7/95]

(This Article applies if any materials are to be supplied which are defined as hazardous under the latest version of Federal Standard No. 313 [including revisions adopted during the term of the Contract].

Incorporate FAR 52.223-3 [Jan 97, Alt. I, Jul 95] with JPL negotiator in lieu of Contracting Officer and adding JPL with the Government in all respects including safety and rights to data.)

INJURY AND ILLNESS PREVENTION PROGRAM [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 4/99]

All Contractors whose personnel work at a site in California must establish and implement an effective injury and illness prevention program in compliance with California law.

INSPECTION OF CONSTRUCTION [T&MC, FPC – 4/99] [FAR 52.246-12 – 8/96; 52.246-9 – 4/84]

- (a) "Work," as used in this Article, includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.
- (b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work called for by this Contract conforms to Contract requirements. The Contractor shall maintain complete inspection records and make them available to JPL. All work shall be conducted under the general direction of JPL and is subject to JPL inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the Contract.
- (c) JPL inspections and tests are for the sole benefit of JPL and do not:
 - (1) Relieve the Contractor of responsibility for providing adequate quality control measures;
 - (2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
 - (3) Constitute or imply acceptance; or
 - (4) Affect the continuing rights of JPL after acceptance of the completed work under paragraph (i) below.

- (d) The presence or absence of a JPL inspector does not relieve the Contractor from any Contract requirement, nor is an inspector authorized to change any term or condition of any specification, unless such inspector has been authorized to make such changes in accordance with the Article entitled "Authority of JPL Representatives."
- (e) The Contractor shall promptly furnish, at no increase in contract price, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by JPL. JPL may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. JPL shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the Contract.
- (f) The Contractor shall, without charge, replace or correct work found by JPL not to conform to Contract requirements, unless JPL consents to accept the work with an appropriate adjustment in Contract price. The Contractor shall promptly segregate and remove rejected material from the premises.
- (g) If the Contractor does not promptly replace or correct rejected work, JPL may (i) by Contract or otherwise, replace or correct the work and charge the cost to the Contractor or (ii) terminate for default the Contractor's right to proceed.
- (h) If, before acceptance of the entire work, JPL decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet Contract requirements, the Institute shall make an equitable adjustment in the Contract price for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.
- (i) Unless otherwise specified in the Contract, JPL shall accept, as promptly as practicable after completion and inspection, all work required by the Contract or that portion of the work JPL determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or JPL's rights under any warranty or guarantee.
- (j) The Government has the right to inspect and evaluate the work performed or being performed under the Contract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If the Government performs inspection or evaluation on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

INSURANCE AND INDEMNIFICATION – FIXED-PRICE CONSTRUCTION [FPC – 4/99] [FAR 52.228-5 – 9/89]

(This Article is applicable if the Contract amount exceeds \$100,000 and if this Contract requires work on a Government installation or premises under the control of the Institute, unless (i) only a small amount of work is required on the Government installation or Institute-controlled premises; or (ii) all such work is to be performed outside the United States, its possessions, or Puerto Rico.)

- (a) Insurance. The Contractor shall, at its own expense, provide and maintain during the entire performance period of this Contract at least the following kinds and minimum amounts of insurance with the Institute named as an additional insured in policies for comprehensive liability insurance with a carrier licensed and admitted in the State of California.
 - (1) Workers' Compensation and Employer's Liability Insurance, as required by applicable Federal and state workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the Employer's Liability section of the insurance policy, except when Contract operations are so commingled with the Contractor's commercial operations that it would not be practical. The Employer's Liability coverage shall be at least \$100,000, except in states with exclusive or monopolistic funds that do not permit worker's compensation to be written by private carriers. However, the Contractor in fulfillment of its obligation to provide Workers' Compensation Insurance may maintain a self-insurance program if the Contractor is qualified pursuant to statutory authority to do so.
 - (2) Comprehensive Liability Insurance, including automobiles (owned, non-owned, or leased), completed operations, products, and contractual liability, for a combined single limit of not less than \$1,000,000 for all deaths, injuries, and property damage arising from one accident or occurrence.

- (3) Builders Risk or Course of Construction "All Risks" coverage, excluding earthquake and flood, covering damage to the work itself, including materials and supplies at the work site, protecting the interests of the Government, the Institute, the Contractor, and subcontractors, in a sufficient amount to pay in full each loss exclusive of a deductible not to exceed \$5,000.
- (b) Insurance Certificates and Endorsements. Before commencing work under this Contract, the Contractor shall furnish (i) certificates of insurance for the coverages specified in (a) above, and (ii) an additional insured endorsement naming the Institute as an additional insured to the contract for the coverage specified in (a)(2) above. Such certificates and the endorsement shall provide that any cancellation or material change in the insurance policies shall not be effective (i) for such period as the laws of the State in which this Contract is to be performed prescribe, or (ii) until 30 days after the insurer or the Contractor gives written notice to JPL, whichever period is longer. Also, such certificates and the endorsement shall (i) cover contractual liability assumed under this Contract, and (ii) be primary and non-contributing to any insurance procured by the Institute. The Contractor agrees to permit the Institute to examine its original policies, should the Institute so request. Should the Contractor at any time neglect or refuse to provide the insurance required herein, or should such insurance be canceled, the Institute shall have the right to procure same and the costs thereof shall be deducted from monies then due or thereafter to become due to the Contractor.
- (c) Indemnification. The Contractor agrees that it will be responsible to the Government and the Institute for, and will indemnify and hold harmless the Government and the Institute, its trustees, officers, and employees, from any loss, cost, damage, expense or liability, attorney's fees, or any suit therefor, by reason of actual or alleged property damage or personal injury of whatsoever kind or character, arising out of or in connection with the performance of work hereunder by the Contractor or any of its subcontractors, howsoever the same may be caused, including any of the same resulting from alleged or actual negligent act or omission, regardless of whether such act or omission is active or passive, but excepting only such loss, cost, damage, expense or liability attributable to the sole negligence or willful misconduct of the Government or of the Institute, its trustees, officers or employees.
- (d) Subcontracts. The Contractor shall insert the substance of this Article, including this paragraph (d), in subcontracts under this Contract which exceed \$100,000 if the subcontract requires work on a Government installation or premises under the control of the Institute, unless (i) only a small amount of work is required on the Government installation or Institute-controlled premises; or (ii) all such work is to be performed outside the United States, its possessions, or Puerto Rico, modified as necessary to correctly identify the parties. At least five days before entry of each such subcontractor's personnel on the Government installation or Institute-controlled premises, the Contractor shall furnish (or ensure that there has been furnished) to JPL a current certificate of insurance, meeting the requirements of paragraph (b) above, for each such subcontractor.

LAYOUT OF WORK AND SURVEYS [FPC – 4/99]

- (a) The Contractor shall complete the layout of the work and shall be responsible for all measurements that may be required for the execution of the work to the location and limit marks prescribed in the specifications or drawings.
- (b) The Contractor shall furnish, at its own expense, stakes, templates, platforms, equipment, tools and material, and all labor as may be required in laying out any part of the work. It shall be the responsibility of the Contractor to maintain and preserve all stakes and other marks established by JPL until authorized to remove them; and if such marks are destroyed or removed by the Contractor prior to their authorized removal, they may be replaced by JPL at its discretion and the expense or replacement will be deducted from any amounts due or to become due the Contractor. JPL may require that work be suspended at any time that location and limit marks established by the Contractor are not reasonably adequate to permit checking of the work.

LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99] [FAR 52.203-12 – 6/97]

(This Article applies if this Contract is expected to exceed \$100,000.)

Incorporate by reference FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions (June 1997).

MATERIAL AND WORKMANSHIP [T&MC, FPC – 4/99]

- (a) All equipment, material, and articles incorporated into the work covered by this Contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this Contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as

limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of JPL, is equal to that named in the specifications, unless otherwise specifically provided in this Contract.

- (b) The Contractor shall obtain JPL's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to JPL the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this Contract or by JPL, the Contractor shall also obtain JPL's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.
- (c) All work under this Contract shall be performed in a skillful and workmanlike manner. JPL may require, in writing, that the Contractor remove from the work any employee JPL deems incompetent, careless, or otherwise objectionable.

MATERIAL REQUIREMENTS [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI – 4/99] [FAR 52.211-5 – 10/97]

(a) Definitions.

As used in this Article:

- (1) New means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within, an original manufacturing process; provided that the supplies meet contract requirements, including but not limited to, performance, reliability, and life expectancy.
 - (2) Reconditioned means restored to the original normal operating condition by readjustments and material replacement.
 - (3) Recovered material means waste materials and by-products that have been recovered or diverted from solid waste including post-consumer material, but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.
 - (4) Remanufactured means factory rebuilt to original specifications.
 - (5) Virgin material means previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore, or any undeveloped resource that is, or with new technology will become, a source of raw materials.
- (b) Unless this contract otherwise requires virgin material or supplies composed of or manufactured from virgin material, the Contractor shall provide supplies that are new, as defined in this Article.
 - (c) A proposal to provide unused former Government surplus property shall include a complete description of the material, the quantity, the name of the Government agency from which acquired, and the date of acquisition.
 - (d) A proposal to provide used, reconditioned, or remanufactured supplies shall include a detailed description of such supplies and shall be submitted to JPL for approval.
 - (e) Used, reconditioned, or remanufactured supplies, or unused former Government surplus property, shall not be used unless the Contractor has proposed the use of such supplies, and JPL has authorized their use.

NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99] [FAR 52.227-2 – 8/96]

(The provisions of this Article shall be applicable only if the amount of this Contract is expected to exceed \$100,000, except when complete performance and delivery are outside the United States, its possessions, and Puerto Rico, unless ultimate delivery is into those areas.)

- (a) The Contractor shall report to the Contracting Officer and JPL, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Contract of which the Contractor has knowledge.
- (b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this Contract or out of the use of any supplies furnished or work or services performed under this Contract, the Contractor shall furnish to the Government, when requested by

the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

- (c) The Contractor agrees to include, and require inclusion of, this Article in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed \$100,000.

NOTICE OF RADIOACTIVE MATERIALS [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI – 4/99] [FAR 52.223-7 – 1/97]

(This Article is applicable only if this Contract is for radioactive materials as defined in this provision.)

Incorporate FAR 52.223-7 (January 1997) with JPL negotiator in lieu of Contracting Officer and adding JPL with the Government in all respects.

NOTICE TO JPL OF LABOR DISPUTES [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99] [FAR 52.222-1 – 2/97]

- (a) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice to JPL. The initial notice shall include the following:
 - (1) Identification of parts/materials, etc., which are or may be affected;
 - (2) Brief description of work-around plans to avoid delivery or performance delays. If the actual or potential dispute involves a lower-tier subcontractor, advise as to potential alternate sources;
 - (3) Other Government agencies having responsibility for any functions concerning the affected operation, e.g., quality control, agency resident representative, etc., and the title, name and telephone of the agency representative.
 - (4) Other Government agencies which have been notified of the situation, and if available, the title, name and telephone number of any representative of another agency who is involved with the actual or threatened labor dispute;
 - (5) Specific information regarding transportation of parts/materials or personnel which is or may be affected;
 - (6) Manufacturer/Subcontractor and union data to include:
 - (A) Name, address and telephone numbers of the manufacturer/subcontractor representative and Industrial Relations Representative to be contacted for further information;
 - (B) Union's name and local lodge number, if known.

If any of the required information is not available when providing the initial notice, indicate when it is estimated that such information can be provided.

- (b) The Contractor agrees to insert the substance of this Article, including this paragraph (b), in any subcontract to which a labor dispute may delay the timely performance of this Contract; except that each such subcontract shall provide that, in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher-tier subcontractor or JPL, as the case may be, concerning the dispute.

OPERATIONS, FACILITIES AND STORAGE AREAS [FPC - 4/99]

- (a) Unless otherwise approved by JPL, the Contractor shall provide and maintain, for the duration of the work, its own office on the job site.
- (b) All operations of the Contractor (including storage of materials) upon JPL-controlled premises shall be confined to areas authorized or approved by JPL. No unauthorized entry upon, or passage through, or storage or disposal of materials shall be made upon, JPL-controlled premises.
- (c) Temporary buildings (storage sheds, shops, offices, etc.) may be erected by the Contractor only with approval of JPL, and either may be of a removable, portable type, or may be erected by the Contractor with labor and materials furnished by the Contractor without expense to the Institute. Such temporary buildings shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon the completion of the work. With the written consent of JPL, such buildings may be abandoned and need not be removed.
- (d) The Contractor shall, under regulations prescribed by JPL, use only established roadways or construct and use such temporary roadways as may be authorized by JPL. Where materials are transported in the

prosecution of the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, protection against damage shall be provided by the Contractor and any roads, curbs, or sidewalks damaged by the Contractor, its subcontractors, or by the agents, servants or employees of the Contractor or subcontractor, shall be repaired by, or at the expense of the Contractor.

- (e) The Contractor shall hold and save the Institute, its trustees, officers, and agents free and harmless from liability of any nature occasioned by the Contractor's performance.

ORDER OF PRECEDENCE [CT, FP-NR&D, FP-R&D, T&MC, LHT&M, FPC, CREI, A-E – 4/99] [FAR 52.215-8 – 10/97]

- (a) The rights and obligations of the parties of this Contract shall be subject to and governed by the Schedule, the General Provisions (the term "General Provisions" includes any "Additional General Provisions"), and any proposals, specifications or other documents or provisions which are made a part of this Contract by reference or otherwise.
- (b) To the extent of any inconsistency between (i) the Schedule, other than the Alterations Article, (ii) the Alterations Article in the Schedule, and (iii) the GPs, the inconsistency will be resolved in the following order of priority:
 - (1) The Alterations Article.
 - (2) The GPs not altered.
 - (3) The Schedule, other than the Alterations Article.
- (c) To the extent of any inconsistency between
 - (1) the Schedule, other than any proposals, specifications or other documents or provisions which are made a part of this Contract by reference or otherwise, in the Schedule, and
 - (2) any proposals, specifications or other documents or provisions which are made a part of this Contract by reference or otherwise in the Schedule,

(c)(1) has order of precedence over (c)(2).
- (d) All provisions of this Contract which are required by their terms to be included in subcontracts shall be required by the Contractor to take precedence in the subcontract over any other provisions.

OTHER CONTRACTS [T&MC, FPC – 8/01] [FAR 52.236-8 - 4/84]

- (a) JPL may undertake or award other contracts for additional work at or near the site of the work under this Contract. The Contractor shall fully cooperate with the other contractors and with JPL employees and shall carefully adapt scheduling and performing the work under this Contract to accommodate the additional work, heeding any direction that may be provided by JPL. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by JPL employees.
- (b) Where the Contractor's work is associated with that of another contractor, the Contractor shall examine the adjacent work and report in writing to JPL any defect or condition preventing the proper performance of this Contract. If the Contractor proceeds without giving such notice, the Contractor shall be held to have accepted the work or materials and the existing conditions, and shall be responsible for any defects in its own work, and shall not be relieved of the obligation of any warranty because of any such condition or imperfection.

PAYMENTS [FPC – 4/99] [FAR 52.232-5 – 5/97]

- (a) General. JPL shall pay the Contractor the Contract price as provided in this Contract.
- (b) Progress Payments. JPL shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by JPL, on estimates of work accomplished which meet the standards of quality established under the contract, as approved by JPL.
 - (1) The Contractor's request for progress payments shall include the following substantiation:
 - (A) An itemization of the amounts requested, related to the various elements of work required by the contract covered by the payment requested.
 - (B) A listing of the amount included for work performed by each subcontractor under the contract.
 - (C) A listing of the total amount of each subcontract under the contract.
 - (D) A listing of the amounts previously paid to each such subcontractor under the contract.

- (E) Additional supporting data in a form and detail required by JPL.
- (2) In the preparation of estimates, JPL may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site may also be taken into consideration if:
- (A) Consideration is specifically authorized by this Contract; and
- (B) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this Contract.
- (c) Contractor Certification. Along with each request for progress payments, the Contractor shall furnish the following certification, or payment shall not be made. (However, if the Contractor elects to delete paragraph (c)(4) from the certification, the certification is still acceptable.)
- I hereby certify, to the best of my knowledge and belief, that :
- (1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the Contract;
- (2) Payments to subcontractors and suppliers have been made from previous payments received under the Contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of chapter 39 of Title 31 United States Code;
- (3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract; and
- (4) This certification is not to be construed as final acceptance of a subcontractor's performance.
- (d) Refund of Unearned Amounts. If the Contractor, after making a certified request for progress payments, discovers that a portion or all of such request constitutes a payment for performance by the Contractor that fails to conform to the specifications, terms, and conditions of this contract (hereinafter referred to as the "unearned amount"), the Contractor shall:
- (1) Notify JPL of such performance deficiency, and
- (2) Be obligated to pay JPL an amount (computed by JPL in the manner provided in paragraph (j) of this article) equal to interest on the unearned amount from the eighth day after the date of receipt of the unearned amount until:
- (A) The date the Contractor notifies the Contracting Officer that the performance deficiency has been corrected; or
- (B) The date the Contractor reduces the amount of any subsequent certified request for progress payments by an amount equal to the unearned amount.
- (e) In making these progress payments, there shall be retained 10% of the estimated amount until final completion and acceptance of the Contract work. However, if JPL finds that satisfactory progress was achieved during any period for which a progress payment is to be made, JPL may authorize payment to be made in full without retention of a percentage. When the work is substantially complete, JPL shall retain an amount that it considers adequate protection of JPL and the Government and may release to the Contractor any excess amount. Also, on completion and acceptance of each separate building, or other division of the Contract, for which the price is stated separately in the Contract, payment may be made for the completed work without retention of a percentage.
- (f) All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as:
- (1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or
- (2) Waiving the right of JPL to require the fulfillment of all of the terms of the Contract.
- (g) In making these progress payments, JPL shall, upon request, reimburse the Contractor for the entire amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished JPL evidence of full payment to the surety.

- (h) JPL shall pay the amount due the Contractor under this Contract after:
- (1) Completion and acceptance of all work;
 - (2) Presentation of a properly executed voucher; and
 - (3) Presentation of release of all claims against the Institute arising by virtue of this Contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this Contract has been assigned under the "Assignment of Rights and Delegation of Duties" Article of this Contract.
- (i) If the Contractor fails to return the release described in paragraph (h)(3) above with the release either executed for the amount determined by JPL or with a different amount within 60 days of JPL's request, JPL may make final payment in the amount determined by JPL and the release (for the JPL-determined amount) described in (g) (3) above will be deemed to have been executed and delivered by the Contractor.
- (j) Interest computation on unearned amounts: In accordance with 31 U.S.C. 3903(c)(1), the amount payable under subparagraph (d)(2) of this article shall be:
- (1) Computed at the rate of average bond equivalent rates of 91 day Treasury bills auctioned at the most recent auction of such bills prior to the date the Contractor receives the unearned amount; and
 - (2) Deducted from the next available payment to the Contractor
- (k) Notwithstanding any provision of this contract, progress payments shall not exceed 80 percent on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contracts, such as contract modifications issued pursuant to the Changes article, or funding and other administrative changes.

PAYROLLS AND BASIC RECORDS [T&MC, FPC – 2/00]

(Work performed outside the United States is exempt from the requirements of this Article.)

- (a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under paragraph (d) of the Article entitled "Davis-Bacon Act" that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- (b) (1) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Institute. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this Article. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005- 00014-1), U.S. Government Printing Office, Washington, DC 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors.
- (2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:
- (A) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this Article entitled "Payrolls and Basic Records" and that such information is correct and complete;

- (B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;
 - (C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.
- (3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this Article.
 - (4) The falsification of any of the certifications in this Article may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.
- (c) The Contractor or subcontractor shall make the records required under paragraph (a) of this Article available for inspection, copying, or transcription by the Institute, the Contracting Officer, or the Department of Labor or their authorized representatives. The Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Institute may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

PERMITS AND RESPONSIBILITIES [T&MC, FPC – 4/99]

The Contractor shall, without additional expense to JPL, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others, including, but not limited to, the enclosing of the Contractor's work area with adequate barricades and, where appropriate, flashing lights as approved by JPL. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the Contract. The Contractor agrees to indemnify the Institute and the Government against any loss, cost, liability or damage by reason of the Contractor's violation of or failure to comply with any applicable laws, executive orders or regulations.

PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI – 8/01] [FAR 52.247-64 – 6/97]

(This Article is applicable when the Contract or subcontract amount is expected to exceed \$100,000. This Article is not applicable for the acquisition of commercial items or commercial components.)

- (a) Except as provided in paragraph (b) below, the Contractor shall use privately owned U.S.-flag commercial vessels, and no others, in the ocean transportation of any supplies to be furnished under this Contract.
- (b) If such vessels are not available for timely shipment at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels, the Contractor shall notify JPL and request (i) authorization to ship in foreign-flag vessels or (ii) designation of available U.S.-flag vessels. If the Contractor is authorized in writing by JPL to ship the supplies in foreign-flag vessels, the Contract price shall be equitably adjusted to reflect the difference in costs of shipping the supplies in privately owned U.S.-flag commercial vessels and in foreign-flag vessels.
- (c)
 - (1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both (i) the Contracting Officer and (ii) the Office of Cargo Preference, Maritime Administration (MAR-590) 400 Seventh Street, SW, Washington, D.C. 20590. Contractor and subcontractor bills of lading shall be submitted through JPL.
 - (2) The Contractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:
 - (A) NASA shown as the sponsoring U.S. Government agency.

- (B) Name of vessel.
 - (C) Vessel flag of registry.
 - (D) Date of loading.
 - (E) Port of loading.
 - (F) Port of final discharge.
 - (G) Description of commodity.
 - (H) Gross weight in pounds and cubic feet, if available.
 - (I) Total ocean freight revenue in U.S. dollars.
- (d) For purchases over \$100,000, the Contractor shall insert the substance of this Article, including this paragraph (d), in all purchase orders and subcontracts under this Contract.
- (e) The requirement in paragraph (a) does not apply to:
- (1) Purchases not exceeding \$100,000;
 - (2) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;
 - (3) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353);
 - (4) Shipments of classified supplies when the classification prohibits the use of non-Government vessels; and
 - (5) Subcontracts for the acquisition of commercial items or commercial components.
- (f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the Office of Costs and Rates, Maritime Administration, 400 Seventh Street, SW, Washington, DC 20590, Phone: 202-366-4610.

PREFERENCE FOR U.S.-FLAG AIR CARRIERS [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99] [FAR 52.247-63 – 1/97]

(This Article does not apply to contracts or subcontracts for supplies, nonpersonal services, and construction that do not exceed \$100,000. This Article is not applicable to the acquisition of commercial items or commercial components.)

Incorporate by reference FAR 52.247-63, Preference for U.S.-Flag Air Carriers.

PRICING OF CONTRACTOR-FURNISHED PROPERTY [FPC – 2/00]

(Work performed outside the United States is exempt from the requirements of this Article.)

On a progressive basis of construction, the Contractor shall promptly furnish and shall cause any subcontractor to furnish, in like manner, at the request of JPL, unit prices and descriptive data required by JPL for property record purposes, of fixtures and equipment furnished and installed by the Contractor.

PROHIBITION OF CONTRACTOR USE OF PRIVATELY OWNED AIRCRAFT IN CONTRACT PERFORMANCE [CT, FPNR&D, FPR&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99]

The Contractor, its employees, agents and subcontractors, shall not use privately owned (noncommercial) aircraft in the performance of this Contract without prior approval of JPL. Any request for approval to use privately owned aircraft must include a certificate of insurance as evidence that the Contractor has in effect Aircraft Liability Insurance coverage of not less than \$5,000,000 for all deaths, injuries and property damage arising from one accident or occurrence. The Contractor shall be required as a condition of JPL's approval to submit an endorsement naming the Institute as an additional insured in such aircraft liability insurance policy. The Contractor shall include this provision in any subcontract involving travel subject to JPL approval or requiring that the subcontractor utilize a privately owned (noncommercial) aircraft.

PROTECTION OF EXISTING VEGETATION, STRUCTURES, MATERIALS, IMPROVEMENTS, UTILITIES, AND WORK IN PROGRESS [T&MC, FPC – 8/01] [FAR 52.236-9 - 4/84]

- (a) The Contractor shall preserve and protect all existing vegetation such as trees, shrubs, and grass on or adjacent to the site of work which is not to be removed and which does not unreasonably interfere with the construction work. Care will be taken in removing trees authorized for removal to avoid damage to vegetation to remain in place. Any limbs or branches of trees broken during such operations or by the careless operation of equipment, or by workers, shall be trimmed with a clean cut and painted with an approved tree pruning compound as directed by JPL.
- (b) The Contractor shall protect from damage all existing structures, improvements or utilities, the location of which is made known to it, within or outside the working area. Such protection shall include both the exterior and interior and the finish thereof and shall be performed by adequately covering or, with the approval of JPL, by temporary removal. Any damage to such facilities resulting from the Contractor's failure to comply with the requirements of this Contract or the failure to exercise reasonable care in the performance of the work shall be promptly repaired or replaced with materials, fixtures or equipment of the same kind, quality and size. If the Contractor fails or refuses to repair any such damage promptly, JPL may have the necessary work performed and charge the cost thereof to the Contractor. Any materials or equipment temporarily removed for protection and not damaged shall be reinstalled.
- (c) The Contractor shall at all times protect and preserve all work in progress, including, but not limited to, work performed, materials, supplies and equipment of every description (including property which may be Government-owned). The protection must be substantial and so placed as to be easily removed for inspection or to facilitate the progress of other work. All reasonable requests of JPL to enclose or specifically protect such property shall be complied with. If, as determined by JPL, materials, equipment, supplies and work performed are not adequately protected by the Contractor, such property may be protected by JPL and the cost thereof may be charged to the Contractor or deducted from any payment due it.

RELEASE OF INFORMATION [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99]

(This Article does not apply if the Article entitled "Release of Information - Preliminary Engineering Report (PER)" is applicable.)

- (a) The Contractor agrees that all information released by the Contractor for publicity or promotional purposes (e.g., news and photo releases, exhibit copy, motion picture scripts, advertising copy) directly related to the Contractor's work with and for JPL will be submitted to JPL for review for technical accuracy prior to issuance. (See enclosed form letter JPL 1737, "Release of Information.")
- (b) The Contractor agrees to insert this clause including this paragraph in all subcontracts.

REQUIRED NOTICES [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI – 4/99]

Unless otherwise specified in this Contract, any notice which the Contractor is required to provide to JPL under any provision of this Contract shall be directed to the JPL Negotiator or the Manager, Acquisition Division, JPL, or their authorized representatives.

RESTRICTIONS ON CERTAIN FOREIGN PURCHASES [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99] [FAR 52.225-11 – 10/96]

Incorporate by reference FAR 52.225-11, Restrictions on Certain Foreign Purchases.

SAFETY AND HEALTH – CONSTRUCTION [T&MC, FPC – 4/99] [NFS 1852.223-70 – 3/97]

(The following provision shall apply if (i) the Contract involves work on or with JPL pressure vessel(s) or pressure system(s) or the Contractor intends to install or operate pressure vessel(s) or pressure system(s) on a JPL or JPL-controlled facility, regardless of dollar value; (ii) JPL determines that hazardous materials or operations are involved in the performance of work hereunder, and so advises the Contractor in writing or (iii) the Contract ceiling amount or price exceeds \$25,000.)

- (a) The Contractor shall take all reasonable safety and health measures in performing under this Contract and shall, to the extent set forth below, submit a safety and health plan (applicable to the work to be performed under this Contract) for JPL's approval. The Contractor shall comply with (i) all Federal, state and local laws applicable to safety and health which are in effect on the date of this Contract and (ii) with the safety and health standards, specifications, reporting requirements, and provisions set forth below.

- (b) The Contractor shall take or cause to be taken any other safety and health measures JPL may reasonably direct. To the extent that the Contractor may be entitled to an equitable adjustment for those measures under the terms and conditions of this Contract, the equitable adjustment shall be determined pursuant to the procedures of the Article of this Contract entitled "Changes;" provided, that no adjustment shall be made under this "Safety and Health" Article for any change for which an equitable adjustment is expressly provided under any other provision of the Contract.
- (c) Standards. The following safety and health standards, specifications, issuances and reporting requirements are prescribed pursuant to paragraph (a), above:
- (1) General Standards and Specifications: The Contractor shall comply with applicable provisions of the Occupational Safety and Health Standards of the Occupational Safety and Health Act of 1970, Rules and Regulations of the Department of Labor issued pursuant thereto and regulations of states provided for under the Act. Within California the Contractor shall comply with applicable provisions of the California Occupational Safety and Health Act of 1973. NASA Procedures and Guidelines (NPGs) 8715, Draft 2, Safety Manual, shall be used as a general policy guide to establish a safety program to be included in the safety and health plan to be submitted in accordance with paragraph (a), above.
 - (2) As part of the Contractor's safety and health plan, the Contractor shall furnish a list of all hazardous operations to be performed, including operations covered by measures indicated in paragraphs (a) and (b) of this Article and a list of other major or key operations required or planned in the performance of the contract, even though not deemed hazardous by the Contractor. JPL and the Contractor shall jointly decide which operations are to be considered hazardous with JPL as the final authority. Before hazardous operations commence, the Contractor shall develop, review, and provide plans for the operation for JPL to review. The Contractor's review procedure shall include evaluations by operating personnel, management and safety professionals, as appropriate. Lists of personnel trained and certified or specified for each hazardous operation shall be maintained. Such records shall be supplied to JPL on request.
 - (3) Fire Protection and Life Safety: The Contractor shall comply with all applicable Federal, State, and Local requirements pertaining to fire protection and life safety. NASA Std NSS 1740.11, NASA Safety Standard for Fire Protection and Life Safety will be followed to ensure safety of NASA facilities.
 - (4) Pressure Vessel and Pressure System Safety: All Contractors performing work under this Contract on or with JPL pressure vessels or pressure systems or pressure vessels or pressure systems to be installed or operated on a JPL or JPL controlled facility shall comply with the requirements of JPL Safety Practice 4-08-70, Pressure Vessels and Systems, currently in effect (copy available upon request) or JPL Safety Office approved equivalent submitted by the Contractor.
 - (5) Any additional safety and health standards, specifications, issuances and reporting requirements set forth in this Contract.
- (d) The safety and health plan to be submitted by the Contractor pursuant to paragraph (a) above shall implement the requirements of this Article and of the standards and specifications of paragraph (c) of this Article and shall describe the means to be employed by the Contractor to monitor and enforce said requirements. The plan shall include the Contractor's standards and criteria for imposing safety and health standards upon its subcontractors of any tier and its plans and procedures for monitoring compliance with such standards. A safety and health plan for similar work performed by the Contractor on a Federal contract may be submitted for review and approval under this Article.
- (e) The Contractor shall immediately notify and promptly report to JPL any accident, incident or exposure resulting in fatality, lost-time occupational injury, occupational disease, contamination of property (or, if this Contract sets forth any acceptable threshold limits of contamination, any contamination of property beyond those stated limits) or property loss of \$25,000 or more arising out of work performed under this Contract. The Contractor is not required to include in any report an expression of opinion as to the fault or negligence of any employee. Service contractors (excluding construction contracts) shall provide quarterly reports specifying lost-time frequency rate, number of lost-time injuries, exposure, and accident/incident dollar losses as specified in the Contract Schedule. The Contractor shall investigate all work-related incidents or accidents to the extent necessary to determine their causes and furnish JPL a report, in such form as JPL may require, of the investigative findings and proposed or completed corrective actions. In addition, the Contractor shall comply with the illness, incident and injury experience reporting requirements set forth below or elsewhere in this Contract.
- (f) Illness, Incident and Injury Experience Reports.

- (1) Reports required by this Article or elsewhere in this Contract shall be furnished in three copies, unless otherwise specified.
- (2) The following illness, incident, and injury experience reports are prescribed pursuant to paragraph (e) above:
 - (A) Investigative Reports: The Contractor shall furnish reports of investigation of individual incidents or accidents or close calls in formats approved by JPL, provided, however, that the Contractor shall not be required to furnish personally identifiable information concerning Contractor or subcontractor employees. Lessons learned from these reports, excluding those related to close calls unless the Contractor believes that material value may be derived from such reporting shall be reported to JPL (for use by JPL as inputs into the NASA Lessons Learned Program).
 - (B) Mishap Reports: The Contractor shall furnish JPL mishap reports and respond to JPL requests for mishap reviews. The Contractor shall conduct its own mishap investigations consistent with NPD 8621.1G, NASA Mishap Reporting and Investigating Policy, dated December 1997, with the understanding that all references to NASA in that policy shall be interpreted to mean the Contractor. The Contractor shall utilize the NPD 8621.1G procedures as guidelines. The Contractor shall also report to the JPL negotiator any incidents that may have visibility in the press, mission failures, or mission anomalies which will have high JPL or NASA visibility in the press.
 - (C) Experience Reports: The Contractor shall prepare and submit to JPL quarterly and semi-annual reports of occupational related illness, incidents, injury experience, and Government property damage due to mishaps or natural phenomena in such detail as prescribed in formats approved by the JPL Negotiator.
 - (D) The Contractor shall furnish such other reports as JPL determines to be related to the Contractor's safety and health program and its experiences thereunder.
- (g) (1) JPL may notify the Contractor in writing of any noncompliance with the provisions of this Article and specify corrective actions to be taken. The Contractor shall promptly take, and report, any necessary corrective action.
- (2) If the Contractor fails or refuses to institute prompt corrective action in accordance with subparagraph (g)(1) of this Article, JPL may invoke any stop work or suspension of work provision of this Contract or any other remedy legally available to the Institute in the event of such failure by the Contractor.
- (h) The Contractor (or subcontractor or supplier) shall cause the substance of this Article, including this paragraph (h) and any applicable provisions of this Contract, with any appropriate changes of designations of the parties, to be inserted in subcontracts of every tier which:
 - (1) Amount to \$1,000,000 or more, unless JPL makes a written determination that this is not required;
 - (2) Require construction, repair, or alteration in excess of \$25,000;
 - (3) Regardless of dollar amount, involve the use of hazardous materials or operations; or
 - (4) Regardless of dollar amount, involve work on or with JPL pressure vessel(s) or pressure system(s) or the installation or operation of pressure vessel(s) or pressure system(s) on a JPL or JPL-controlled facility.
- (i) The Contractor agrees that authorized representatives of JPL or the Contracting Officer shall have access to and the right to examine the sites or areas where work under this Contract is being performed in order to determine the adequacy of the Contractor's safety and health measures under this Article.

SCHEDULE OF PAYMENTS [FPC – 4/99]

Within 10 days after receipt of written Notice to Proceed, the Contractor shall submit to JPL a detailed breakdown of the total Contract price showing values of each principal category and subcategories included therein, including quantities, in such detail and supported by such evidence as to its correctness as JPL may require. This Schedule, when approved by JPL, shall be used as a basis for payments in accordance with the Article entitled "Payments." In applying for payments, the Contractor shall submit a statement based upon the JPL-approved Schedule and itemized in such form and supported by such evidence as JPL may require to justify the payment.

SCHEDULES FOR CONSTRUCTION CONTRACTS [FPC - 4/99]

- (a) The Contractor shall, within five days after work commences on the Contract, or within such other period as determined by JPL, prepare and submit to JPL for approval three copies of a practicable schedule showing

the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, JPL may withhold approval of progress payments until the Contractor submits the required schedule.

- (b) The Contractor shall enter the actual progress on the chart as directed by JPL, and upon doing so shall immediately deliver three copies of the annotated schedule to JPL. If, in the opinion of JPL, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by JPL, without additional cost to the Institute. In this circumstance, JPL may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as JPL deems necessary to demonstrate how the approved rate of progress will be regained.
- (c) Failure of the Contractor to comply with the requirements of JPL under this Article shall be grounds for a determination by JPL that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, JPL may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the Article entitled "Default" of this Contract.

SIGNS AND ADVERTISEMENTS [T&MC, FPC – 4/99]

No signs or advertisements will be allowed on the site unless prior written approval is obtained from JPL.

SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK [FPC – 4/99]

- (a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (i) conditions bearing upon transportation, disposal, handling, and storage of materials, (ii) the availability of labor, water, electric power, and roads, (iii) uncertainties of weather, river stages, tides, or similar physical conditions at the site, (iv) the conformation and conditions of the ground, and (v) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by JPL, as well as from the drawings and specifications made a part of this Contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to JPL.
- (b) JPL assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by JPL, nor does JPL assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents or employees before the execution of this Contract, unless that understanding or representation is expressly stated in this Contract.

SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (S/SD/WOSB PLAN) [CT, FP-NR&D, FP-R&D, T&MC, LHT&M, FPC, CREI – 8/01] [FAR 52.219-9 – 8/96]

(This Article is applicable if the basic contract or any separate modification exceeds \$500,000 [\$1,000,000 for construction], except it does not apply to contracts with small businesses or orders under GSA contracts. Work performed outside the United States is exempt from the requirements of this Article.)

- (a) If there will be any subcontracting under this Contract and the basic or any modification exceeds \$500,000, (\$1,000,000 for construction of any public facility), the Contractor agrees to submit for JPL approval a Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan (Plan) and to provide a written update to the Plan for every modification exceeding \$500,000 (\$1,000,000 for construction of a public facility). JPL's approval will be based on the requirements in JPL form 0294 entitled "Requirements for a Subcontracting Plan." The approved Plan and approved updates will be deemed incorporated into this Contract.

- (b) If a Plan is required under this Contract, SF 294, "Subcontracting Report for Individual Contracts," and SF 295, "Summary Subcontract Report," are deliverables, which must be submitted by the Contractor to the JPL Negotiator in accordance with the instructions on the forms.
- (c) It is understood and agreed that the failure of the Contractor to comply in good faith with the Article of this Contract entitled "Utilization of Small, Small Disadvantaged, and Women-Owned Small Business Concerns," or with any Plan required to be included in this Contract, shall be a material breach of this Contract.

SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION [T&MC, FPC – 4/00]

- (a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give JPL access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to JPL, which shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. JPL shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.
- (b) Whenever in the specifications or upon the drawings the words "directed," "required," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the "direction," "requirement," "order," "designation," or "prescription," of JPL is intended and similarly the words "approved," "acceptable," "satisfactory," or words of like import shall mean "approved by," or "acceptable to," or "satisfactory to" JPL, unless otherwise expressly stated.
- (c) Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this Contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed."
- (d) Shop drawings means drawings, submitted to JPL by the Contractor, subcontractor, or any lower tier subcontractor pursuant to a construction contract, showing in detail (i) the proposed fabrication and assembly of structural elements, and (ii) the installation (i.e., fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the contractor to explain in detail specific portions of the work required by the contract. JPL may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this Contract.
- (e) If this Contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with Contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to JPL without evidence of the Contractor's approval may be returned for resubmission. JPL will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate JPL's reasons therefor. Any work done before such approval shall be at the Contractor's risk. Approval by JPL shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this Contract, except with respect to variations described and approved in accordance with (f) below.
- (f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If JPL approves any such variation, JPL shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.
- (g) The Contractor shall submit to JPL for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the JPL and one set will be returned to the Contractor.

SUBCONTRACTORS [FPC – 4/99]

- (a) The Contractor shall within seven days after receipt of written Notice of Award, if any, or if none, within seven days after receipt of the fully executed Contract documents, furnish to JPL a list of all subcontracts which involve performance of work at the site. The Contractor shall provide written notice of any work with any person or firm other than those subcontractors named in the submitted list seven days prior to their performance or work at the site.

- (b) Nothing contained in this Contract shall create any contractual relationship between a subcontractor and the Institute. The Contractor shall be at all times responsible for the work of its subcontractors to the same extent as if the Contractor were doing or had done the work.

SUBCONTRACTS - LABOR STANDARDS [T&MC, FPC – 2/00]

(Work performed outside the United States is exempt from the requirements of this Article.)

- (a) The Contractor or subcontractor shall insert in any subcontracts the Articles entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act - Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Act Requirements," "Withholding of Funds," "Subcontracts (Labor Standards)," "Contract Termination - Debarment," "Disputes Concerning Labor Standards," "Compliance with Davis-Bacon and Related Act Regulations," and "Certification of Eligibility," and such other Articles as the Institute may by appropriate instructions require, and also a clause requiring the subcontractors to include these Articles in any lower-tier subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with all the Contract Articles cited above.
- (b) (1) Within 14 days after award of the Contract, the Contractor shall deliver to JPL a completed "Incorporation of Labor Standards Provisions," form JPL 3557, for each subcontract, including the subcontractor's signed and dated acknowledgment that the Articles set forth in paragraph (a) of this Article have been included in the subcontract.
- (2) Within 14 days after the award of any subsequently awarded subcontract, the Contractor shall deliver to JPL an updated completed form JPL 3557 for such additional subcontract.

SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 8/01] [FAR 52.244-6 – 10/95]

- (a) Definition.
- (1) "Commercial item," as used in this Article, has the meaning contained in the "Definitions" Article and in FAR 52.202-1, "Definitions."
- (2) "Subcontract," as used in this Article, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.
- (b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this Contract.
- (c) Notwithstanding any other Article of this Contract except to the extent needed to satisfy the technical requirements and technical data (including software) deliverables under this Contract, the Contractor is not required to include any JPL provision or Article, other than those FAR provisions listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:
- (1) 52.222-26, Equal Opportunity (E.O. 11246);
- (2) 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212(a)); and
- (3) 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).
- (d) The Contractor shall include the terms of this provision, including this paragraph (d), in subcontracts awarded under this Contract.

SUPERINTENDENCE BY THE CONTRACTOR [T&MC, FPC – 8/01] [FAR 52.236-6 - 4/84]

At all times during performance of this Contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work a competent superintendent who is satisfactory to JPL and has authority to act for the Contractor. The Contractor shall submit the name of this representative to JPL prior to commencement of site work.

SUSPENSION OF WORK [T&MC, FPC – 8/01] [FAR 52.242-14 - 4/84]

- (a) JPL may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this Contract for the period of time that JPL determines appropriate for the convenience of JPL or the Government.
- (b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (i) by an act of JPL in the administration of this Contract, or (ii) by JPL's failure to act within the time

specified in this Contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the Contract modified in writing accordingly. However, no adjustment shall be made under this Article for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this Contract.

- (c) A claim under this Article shall not be allowed (i) for any costs incurred more than 20 days before the Contractor shall have notified JPL in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (ii) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the Contract.

TEMPORARY UTILITIES AND UTILITY TIE-INS [T&MC, FPC – 4/99]

- (a) Water. All reasonably required amounts of water will be made available to the Contractor by JPL from existing water system outlets and supplies. Any pumping facilities, temporary connections or piping required to transmit the water shall be furnished by the Contractor, subject to the approval of JPL, and shall be removed in a satisfactory manner, at the Contractor's expense, when the job is completed.
- (b) Electricity.
 - (1) All reasonable electric current required by the Contractor shall be furnished by JPL. All temporary connections for electricity shall be subject to the approval of JPL.
 - (2) All temporary lines will be furnished, installed, connected and maintained by the Contractor in a workmanlike manner satisfactory to JPL and shall be removed by the Contractor in like manner at its expense prior to completion of the construction.
 - (3) The Contractor shall furnish engine-driven welders for required welding power.
- (c) Telephone Service. Unless otherwise provided in this Contract, telephone service shall be provided by the Contractor, or, where available, JPL pay telephones may be used.
- (d) Utility Tie-Ins.
 - (1) All tie-ins, modifications, or moving of JPL utilities such as air, power, fire sprinkler systems, water, air-conditioning systems, etc., must be scheduled through JPL and shall be done on Saturdays or Sundays, if required, at no additional cost to JPL.
 - (2) Unless otherwise specified in this Contract, the Contractor shall submit schedules to JPL at least 10 calendar days in advance of any building utility outages and off-hour work, and JPL will inform the Contractor within seven calendar days of receipt of notification of approval or disapproval of such schedules.
- (e) Water and Utility Usage. The Contractor shall provide continuous surveillance of water flow or other utility usage to prevent waste or damage to JPL property.

TERMINATION FOR CONVENIENCE – CONSTRUCTION [FPC – 4/99] [FAR 52.249-2, ALT 1 – 9/96]

- (a) JPL may terminate performance of work under this Contract in whole or, from time to time, in part if JPL determines that a termination is in the best interest of the Institute. JPL shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.
- (b) After receipt of a Notice of Termination, and except as directed by JPL, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Article:
 - (1) Stop work as specified in the notice.
 - (2) Place no further subcontracts or orders (referred to as subcontracts in this Article) for materials, services, or facilities, except as necessary to complete the continued portion of the Contract.
 - (3) Terminate all subcontracts to the extent they relate to the work terminated.

- (4) Assign to JPL, as directed by JPL, all right, title, and interest of the Contractor under the subcontracts terminated, in which case JPL shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
 - (5) With approval or ratification to the extent required by JPL, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this Article.
 - (6) As directed by JPL, transfer to the Government title and deliver to JPL (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to JPL.
 - (7) Complete performance of the work not terminated.
 - (8) Take any action that may be necessary, or that JPL may direct, for the protection and preservation of the property related to this Contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
 - (9) Use its best efforts to sell, as directed or authorized by JPL, any property of the types referred to in subparagraph (6) above; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, JPL. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by JPL under this Contract, credited to the price or cost of the work, or paid in any other manner directed by JPL.
- (c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120 day period.
 - (d) After expiration of the plant clearance period as defined in Subpart 45.6 of the FAR and any corresponding implementing or supplementing provisions in the NFS, in effect on the date of this Contract, the Contractor may submit to JPL a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by JPL. The Contractor may request JPL to remove those items or enter into an agreement for their storage. Within 15 days, JPL will accept those items and remove them or enter into a storage agreement. JPL may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
 - (e) After termination, the Contractor shall submit a final termination settlement proposal to JPL in the form and with the certification prescribed by JPL. The Contractor shall submit the proposal promptly, but no later than six months from the effective date of termination, unless extended in writing by JPL upon written request of the Contractor within this six- month period. However, if JPL determines that the facts justify it, a termination settlement proposal may be received and acted on after six months or any extension. If the Contractor fails to submit the proposal within the time allowed, JPL may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
 - (f) Subject to paragraph (e) above, the Contractor and JPL may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) below, exclusive of costs shown in subparagraph (g)(3) below, may not exceed the total Contract price as reduced by (i) the amount of payments previously made and (ii) the Contract price of work not terminated. The Contract shall be amended, and the Contractor paid the agreed amount. Paragraph (g) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
 - (g) If the Contractor and JPL fail to agree on the whole amount to be paid the Contractor because of the termination of work, JPL shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (f) above:
 - (1) For Contract work performed before the effective date of termination, the total (without duplication of any items) of:
 - (A) The cost of this work;

- (B) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract if not included in subparagraph (A) above; and
 - (C) A sum, as profit on (A) above, determined by JPL under FAR 49.202 and any corresponding implementing or supplementing provisions in the NFS, in effect on the date of this Contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, JPL shall allow no profit under this subparagraph (C) and shall reduce the settlement to reflect the indicated rate of loss.
- (2) The reasonable costs of settlement of the work terminated, including:
- (A) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (B) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (C) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- (h) Except for normal spoilage, and except to the extent that JPL or the Government expressly assumed the risk of loss, JPL shall exclude from the amounts payable to the Contractor under paragraph (g) above, the fair value, as determined by JPL, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to JPL or to a buyer.
- (i) The cost principles and procedures of Part 31 of the FAR and any corresponding implementing or supplementing provisions in the NFS, in effect on the date of this Contract, shall govern all costs claimed, agreed to, or determined under this Article.
- (j) In arriving at the amount due the Contractor under this Article, there shall be deducted:
- (1) All unliquidated advance or other payments to the Contractor under the terminated portion of this Contract;
 - (2) Any claim which JPL has against the Contractor under this Contract; and
 - (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this Article and not recovered by or credited to JPL.
- (k) If the termination is partial, the Contractor may file a proposal with JPL for an equitable adjustment of the price(s) of the continued portion of the Contract. JPL shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this Article shall be requested within 90 days from the effective date of termination unless extended in writing by JPL.
- (l) (1) JPL may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the Contract, if JPL believes the total of these payments will not exceed the amount to which the Contractor will be entitled.
- (2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to JPL upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by JPL because of the circumstances.
- (m) Unless otherwise provided in this Contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this Contract for three years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this Contract. The Contractor shall make these records and documents available to JPL and the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

TOXIC CHEMICAL RELEASE REPORTING [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99] [FAR 52.223-14 – 10/96]

(This Article is applicable to all contracts where the value of the contract and all options at the time of award is expected to exceed \$100,000.)

By entering into this Contract, the Contractor agrees to abide by and accept all of the Terms and Conditions found in the Federal Acquisition Regulations (FAR) at 52.223-14.

TRANSFER OF TECHNICAL DATA UNDER SPACE STATION INTERNATIONAL AGREEMENTS [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 8/01] [NFS 1852.227-87 – 4/89]

(This Article applies to contracts and subcontracts in support of Space Station program activities that may involve transfer of technical data subject to the International Traffic in Arms Regulations, 22 CFR parts 120 through 130, or the Export Administration Regulations (EAR), 15 CFR PARTS 730-799 in accordance with the NASA Export Control Program.)

- (a) In the cooperative Space Station Freedom Program, NASA has the authority to provide to the international partners all information necessary to implement the multilateral Space Station Intergovernmental Agreement and the Space Station Memoranda of Understanding. NASA is committed under these Space Station agreements to provide its international Space Station partners with certain technical data which are subject to the U.S. export control laws and regulations. NASA will have obtained any necessary approvals from the Department of State for the transfer of any such technical data. Space Station contractors, acting as agents of NASA under the specific written direction of the Contracting Officer, or designated representative, require no other separate approval under the International Traffic in Arms Regulations (ITAR).
- (b) The Contractor agrees, when specifically directed in writing by the JPL Negotiator or an authorized JPL representative under this Contract, acting upon the written direction of the NASA Contracting Officer or designated representative, to transfer identified technical data to a named foreign recipient, in the manner directed. No export control marking should be affixed to the data unless so directed. If directed, the text of the marking to be affixed will be furnished by NASA through the JPL Negotiator or an authorized JPL representative under this Contract.
- (c) It should be emphasized that the transfer is limited solely to those technical data which NASA specifically identifies and directs the Contractor to transfer in accordance with paragraph (b), above, and that all other transfers of technical data to foreign entities are subject to the requirements of the U.S. export control laws and regulations.
- (d) Nothing contained in this Article affects the allocation of technical data rights between NASA and the Contractor or any subcontractors as set forth in the "Rights in Data" Article of this Contract, nor the protection of any proprietary technical data which may be available to the Contractor or any subcontractor under that Article.
- (e) The Contractor agrees to include this Article, including this paragraph (e), in all subcontracts hereunder, appropriately modified to reflect the relationship of the parties.

UNION DATA FOR ON-SITE CONTRACTORS [FPC – 2/00]

(This Article applies to any work at a JPL-controlled facility. Work performed outside the United States is exempt from the requirements of this Article.)

The Contractor shall provide JPL-requested union information, including union information pertaining to its Subcontractors, if any, on the "Request for Union Data Regarding On-Site Contractors and Their Subcontractors," set forth below. A copy of this form (sample shown below), filled in, shall be returned to the cognizant negotiator's attention. Any changes in the data, such as the addition of a new union subcontractor, shall be provided to JPL through timely resubmission of the following form:

REQUEST FOR UNION DATA REGARDING ON-SITE CONTRACTORS AND THEIR SUBCONTRACTORS

- 1. Date:
- 2. Contract number:
- 3. Scheduled Contract completion date:
- 4. Contractor name:
- 5. Total number of on-site personnel:

6. Cognizant Negotiator:
7. Subcontractors under this Contract with union personnel working on-site at JPL-controlled facilities.

Number of Subcontractor Personnel at JPL Site:

- | <u>Subcontractor</u> | <u>Total Personnel</u> | <u>No. of Union Personnel</u> |
|---|------------------------|-------------------------------|
| 8. Brief description of scope of work and location of work site sufficient to locate the union contract and subcontract workers. | | |
| 9. a. Local union name: | Local No. (if any): | |
| b. Number of on-site Contractor/subcontractor personnel represented: | | |
| c. Name, phone number and address of business agent representing the local union: | | |
| (1) Name: | | |
| (2) Phone: | | |
| (3) Address: | | |
| d. Expiration date of labor agreement: | | |
| e. (1) If applicable, the employer association responsible for negotiating each agreement for Contractor/subcontractor: | | |
| (2) If applicable, the names of Contractor's/subcontractor's local employer representatives who take part in such negotiations: | | |
| 10. Name, phone number and address of the Contractor's subcontractor's representative who is responsible for handling labor relations/human resources issues: | | |
| a. Name: | | |
| b. Phone: | | |
| c. Address: | | |

(Note: For items 8., 9., and 10., provide for each union and also for each on-site subcontract, as applicable.)

USE AND POSSESSION PRIOR TO COMPLETION [FPC - 8/01] [FAR 52.236-11 - 4/84]

- (a) JPL shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, JPL shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that JPL intends to take possession of or use. However, failure of JPL to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the Contract. JPL's possession or use shall not be deemed an acceptance of any work under the Contract.
- (b) While JPL has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from JPL's possession or use, notwithstanding the terms of the Article in this Contract entitled "Permits and Responsibilities." If prior possession or use by JPL delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the Contract price or the time of completion, and the Contract shall be modified in writing accordingly.

USE OF RURAL AREA SMALL BUSINESSES [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI - 2/00] [NFS 1852.219-74 - 9/90]

(Work performed outside the United States is exempt from the requirements of this Article.)

Incorporate by reference NFS 1852.219-74, Use of Rural Area Small Businesses.

UTILIZATION OF SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS CONCERNS [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI - 4/99] [FAR 52.219-8 - 6/97]

(This Article is applicable when the Contract amount is expected to be over \$100,000, unless (i) a personal services contract is contemplated, (ii) a commercial items or services contract, or (iii) the Contract together with all its subcontracts is to be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.)

Incorporate by reference FAR 52.219-8, Utilization of Small, Small Disadvantaged, and Women-Owned Small Businesses.

WARRANTY OF CONSTRUCTION [T&MC, FPC – 4/99]

- (a) In addition to any other warranties in this Contract, the Contractor warrants, except as provided in paragraph (i) of this Article, that work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.
- (b) This warranty shall continue for a period of one year from the date of final acceptance of the work. If JPL takes possession of any part of the work before final acceptance, this warranty shall continue for a period of one year from the date JPL takes possession.
- (c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Institute or Government owned or controlled real or personal property, when that damage is the result of:
 - (1) The Contractor's failure to conform to Contract requirements; or
 - (2) Any defect of equipment, material, workmanship, or design furnished.
- (d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this Article. The Contractor's warranty with respect to work repaired or replaced will run for one year from the date of repair or replacement.
- (e) JPL shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
- (f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, JPL shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.
- (g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this Contract, the Contractor shall:
 - (1) Obtain all warranties that would be given in normal commercial practice;
 - (2) Require all warranties to be executed, in writing, for the benefit of JPL or the Government, if directed by JPL; and
 - (3) Enforce all warranties for the benefit of JPL or the Government, if directed by JPL.
- (h) In the event the Contractor's warranty under paragraph (b) of this Article has expired, JPL or the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.
- (i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by JPL nor for the repair of any damage that results from any defect in JPL-furnished material or design.
- (j) This warranty shall not limit JPL's rights under the "Inspection of Construction" Article of this Contract with respect to latent defects, gross mistakes, or fraud.
- (k) Defects in design or manufacture of equipment, specified by JPL on a "brand name and model" basis, shall not be included in this warranty. In this event, the Contractor shall require any subcontractors, manufacturers, or suppliers thereof to execute their warranties in writing directly to the Institute.

WITHHOLDING OF FUNDS [FPC – 4/99]

The Institute shall, upon its own action or upon written request of the Contracting Officer or an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this Contract or any other contract with the same Contractor, or any other Federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the Contract, the Institute may, after written notice to the

Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

WORKING HOURS AND SPECIAL WORK DAYS [T&MC, FPC – 4/99]

- (a) The Contract price is based on working whatever schedule may be necessary to complete the work within the prescribed time.
- (b) No work shall be performed on Saturdays, Sundays, or holidays recognized by JPL without prior notification to and approval by JPL, which notification shall be not less than 48 hours.

YEAR 2000 COMPLIANCE REQUIREMENT - NEW WORK [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99]
[PIC 98-8 - 5/21/98]

(This provision is not applicable to contracts \$2,500 or less.)

The Statement of Work includes the following performance requirements:

- (a) **Definition.** "Year 2000 compliant," as used in this provision, means that the information technology (hardware, software and firmware, including embedded systems or any other electro-mechanical or processor-based systems used in accordance with its associated documentation) accurately processes date and date-related data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, and, to the extent that other information technology, used in combination with the information technology being acquired, properly exchanges date and date-related data with it.
- (b) (1) Any information technology provided, operated and/or maintained under this Contract is required to be Year 2000 compliant. To ensure this result, the Contractor shall provide documentation describing how the IT items or services demonstrate Year 2000 compliance, consisting of standard product literature or test reports for commercial items, test procedures, or other documentation, if any, otherwise specifically required in paragraph (b)(2).

(2) (RESERVED)
- (c) The Contractor warrants that any IT items or services provided under this Contract that involve the processing of date and date-related data are Year 2000 compliant. If the Contract requires that specific listed products must perform as a system in accordance with the foregoing warranty, then that warranty shall apply to those listed products as a system.
- (d) The remedies available under this warranty shall include repair or replacement, at no additional cost to JPL (or if this is a cost-reimbursement contract, at no additional fee to JPL) and the Government, of any provided items or services whose non-compliance is discovered and made known to the Contractor in writing within 90 days after acceptance. In addition, all the other terms and limitations of the Contractor's standard commercial warranty or warranties shall be available to JPL for the IT items or services acquired under this Contract. Nothing in this warranty shall be construed to limit any rights or remedies JPL may otherwise have under this Contract with respect to defects other than Year 2000 performance.
- (e) (Reserved)



Jet Propulsion Laboratory
California Institute of Technology
4800 Oak Grove Drive
Pasadena, California 91109-8099
(818) 354-4321

RELEASE OF INFORMATION

This Contract with the Jet Propulsion Laboratory (JPL) constitutes a subcontract under a prime contract between the California Institute of Technology and the National Aeronautics and Space Administration (NASA). It is NASA's policy to provide the widest practical dissemination of information on all of its activities. Since 90% of NASA's research and development effort is performed by private industry, contractors and subcontractors have played a large role in this process.

In accordance with this policy, the Contractor may want to issue press releases or plan publicity and advertising from time to time, and the Contractor will be expected to respond to queries from information media.

Close coordination in all of these matters is required, and JPL requires that all materials (e.g., news and photo releases, exhibit copy, motion picture scripts, advertising copy) directly related to the Contractor's work with and for JPL be reviewed by JPL for technical accuracy prior to issuance or use.

To expedite this review, the Contractor shall send the materials to the JPL Media Relations Office, mail stop 186-120, stating the Contractor's deadlines and referencing this Contract number.

In the event this Contract is a cost-reimbursement type contract, review by JPL shall not constitute approval for reimbursement of expenditures made in connection with publicity or advertising releases. Any such expenditures remain subject to applicable cost principles.

Nothing contained herein shall be deemed to change existing requirements relating to the release of classified information.

NOTIFICATION TO PROSPECTIVE CONTRACTORS OF JPL'S ETHICS POLICIES AND ANTI-KICKBACK HOT LINE

JPL is committed to conducting its business in accordance with the highest standards of ethics and integrity. In this regard, we have an on-going orientation and training program to assure that every JPL employee is aware of this commitment and their individual responsibility for compliance. We must rely on the personal integrity of our employees and the integrity and cooperation of our suppliers and contractors to make sure that these high standards are maintained.

The policies that implement our standards of business conduct state clearly that no employee may solicit or accept any "kickback," gift, gratuity, entertainment, compensation, or favors of any kind from any supplier/contractor or prospective supplier/contractor to JPL. Our policies make it clear that these standards not only apply to procurement personnel but also to employees in all functions and at all levels.

The purpose of this letter is to make sure that you and your employees are aware of our policies, and that together we can achieve and maintain excellence in the conduct of our business relationships.

In the unlikely event that any JPL employee ever attempts to solicit a "kickback," please notify us immediately. JPL has established an Anti-Kickback Hot Line number, (818) 354-9999. Please feel free to call this number collect. The information you provide will be handled with confidentiality, investigated thoroughly, and appropriate action taken.

Thank you for your cooperation and support in this important matter.



CERTIFICATIONS

(NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.)

I. CERTIFICATION OF NONSEGREGATED FACILITIES

- (a) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise.
- (b) By the submission of an offer, the offeror certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in the contract.
- (c) By submission of the offer, the offeror further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will:
 - (1) Obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the Equal Opportunity clause;
 - (2) Retain such certifications in its files; and
 - (3) Forward this certification and the following notice to the proposed subcontractors:

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES

A Certificate of Nonsegregated Facilities must be submitted before the award of a subcontract under which the subcontractor will be subject to the Equal Opportunity clause. The certification may be submitted either for each subcontractor for all subcontracts during a period (i.e., quarterly, semi-annually, or annually).

- (d) By commencing performance of the Contract work, the selected contractor certifies to the Nonsegregated Facilities provisions above.

II. CERTIFICATION OF ANTI-KICKBACK COMPLIANCE

(A Certification of Anti-Kickback Compliance must be submitted prior to award.)

By submission of an offer, the offeror certifies that it has read the General Provision entitled "Anti-Kickback Procedures," contained in the solicitation and that neither it nor any of its employees has performed or participated in any prohibited actions, as defined in that provision, relating to the award of the Contract. By commencing performance of the Contract work, the selected contractor certifies to Anti-Kickback Compliance.

III. CERTIFICATION OF AMERICANS WITH DISABILITIES ACT COMPLIANCE

(The Contractor represents and certifies the following as part of its offer.)

By submission of an offer, the offeror certifies that it complies with the Americans with Disabilities Act, 42 U.S.C., 12101 et. seq., and will maintain compliance throughout the life of this Contract. By commencing performance of the Contract work, the selected contractor certifies to the Americans with Disabilities Act compliance.

**IV. CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS
TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(The following certification applies to all offers and awards in excess of \$100,000.)

- (a) The definitions and prohibitions contained in the General Provision Article "Limitation on Payments to Influence Certain Federal Transactions" are hereby incorporated by reference in paragraph (b) of this Certification.
- (b) By submission of an offer, the offeror certifies to the best of his or her knowledge and belief that on or after December 23, 1989:
 - (1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;
 - (2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the Offeror shall complete and submit, with its offer, OMB Standard Form LLL, "Disclosure of Lobbying Activities," to the JPL Contract Negotiator; and
 - (3) He or she will include the language of this Certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
- (c) Submission of this certification and disclosure is a prerequisite for making or entering into this Contract imposed by Section 1352, Title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to civil penalty of not less than \$20,000 and not more than \$100,000, for each such failure.

**V. CERTIFICATION OF FULL DISCLOSURE BY THE CONTRACTOR/OFFEROR
REGARDING WHETHER IT ANTICIPATES BEING OR IS DEBARRED,
SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE U.S. FEDERAL
GOVERNMENT AT TIME OF AWARD**

(This certification applies to contracts with a contract value exceeding \$25,000.)

- (a) By submission of an offer, the offeror certifies that it has provided full disclosure in writing to JPL whether as of the anticipated time of award of any contract resulting from the solicitation, it anticipates that it or its principals will be debarred, suspended, or proposed for debarment by the U.S. Federal Government.
- (b) By commencing performance of the Contract work, the selected contractor certifies that it has made full disclosure to JPL in writing as to whether as of the time of award it or any of its principals is debarred, suspended, or proposed for debarment by the U. S. Federal Government. (see FAR 9.404 for information on the List of Parties Excluded from Procurement Programs).

VI. CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING

(This certification is required prior to award of a contract with an estimated value, including any options, over \$100,000.)

- (a) Submission of this certification is a prerequisite for making or entering into this Contract imposed by Executive Order 12969, August 8, 1995.
- (b) By submission of an offer, the offeror certifies that it has accepted and certifies to all the Terms and Conditions found in the Federal Acquisition Regulation (FAR) at 52.223-13.

VII. CERTIFICATION REGARDING CONTRACTOR REPRESENTATION BY FORMER CALTECH/JPL EMPLOYEES

(The Contractor represents and certifies the following as part of its offer.)

By submission of an offer, the offeror certifies that it has no previous JPL or Caltech employee involved in this procurement who has been gone from JPL for less than one year, who participated personally and substantially in the subject matter while working for JPL or Caltech, who was officially responsible for the subject matter while working for JPL or Caltech, and who owns or represents the proposer's organization.



ASBESTOS NOTIFICATION

The Jet Propulsion Laboratory is committed to providing a safe and healthy work environment for all personnel.

In the past several years, the Laboratory management, working through the JPL Safety Operations Section - Industrial Hygiene and Workers Compensation Group (SOS - IHWC) and the Facilities Division, has had an on-going program of asbestos identification and control. This program has included bulk sampling, air monitoring, and training for members of the Facilities and Maintenance staff.

Through this program, some of the buildings at JPL have been identified to contain friable sprayed-on fireproofing above the ceilings. At the Oak Grove site, these buildings include 167, 168, 169, 179, 180, 183, 186, 230, 238, 264 and 291, and at the Foothill site, buildings 502, 506 and 507. Asbestos may be present in other JPL buildings in other various forms, including, but not limited to: transite, thermal system insulation, roofing products, ceiling tiles, spray-applied acoustical ceiling, wall materials, and floor tiles/linoleum/mastic.

The majority of asbestos at JPL is located in restricted access areas, such as mechanical rooms, boiler rooms and attics. It is in generally good condition and does not pose a hazard during normal operations.

The SOS-IHAWC staff has taken numerous air samples in JPL buildings. Sampling results indicate that airborne asbestos levels in the buildings are well below regulatory limits and are lower than those found in industrial workplaces where adverse health effects have been observed. Fiber levels in JPL buildings are not significantly different than fiber levels found outside.

Asbestos-containing materials do not pose a health hazard, unless the fibers become airborne. Contractor maintenance/construction/renovation activity involving intentional or accidental contact with friable materials can release fibers; therefore, only authorized and properly trained personnel are permitted to perform work that may disturb asbestos materials.

General written procedures and handling restrictions have been provided to JPL and contractor personnel. SOS-IHAWC must be given notification and, if deemed necessary, a written description of any asbestos-related work to be conducted in areas where asbestos may be present prior to the initiation of activities. The work to be performed will determine if these areas must be tested and cleared. SOS-IHAWC will review sampling results and documentation after completion of contractor activities prior to occupancy.

Pursuant to the California Health and Safety Code (Chapter 10.4, Section 25915), each employee has the right to review all reports about surveys, bulk sampling and air sampling. These reports are available for review during normal business hours. Contact SOS-IHAWC at extension 4- 1771 to review these documents or if there are any questions.

Notice of Potential Tax Withholding

JPL is legally obligated to withhold federal and/or state income tax from certain contractor and consultant payments when required by law. Withholding may be required under the following circumstances:

1. Nonresident Independent Contractor/Consultant State Source Income Tax

Payments made to California nonresident contractors or consultants, including sole proprietors, corporations, limited liability companies, and partnerships, that do not have a permanent place of business in CA, or that are not registered to do business in California, are subject to a seven percent state income tax withholding for services performed in California. No withholding is required on payments for goods, or for services performed outside California. See State Tax Form 587 (Nonresident Income Allocation Worksheet) and Form 590 (Withholding Exemption Certificate).

2. Nonresident (and Resident) Alien Federal Income Tax

Payments made to nonresident alien contractors/consultants are subject to a thirty percent federal income tax withholding for services performed in the U.S. unless an exception applies. A nonresident alien from a country with an income tax treaty with the United States may be exempt from tax under the Self-employment Article of the treaty if the individual satisfies the conditions of the treaty article. A nonresident alien from a non-treaty country may claim a daily personal exemption amount. Such nonresident aliens who have a U.S. taxpayer identification number (TIN) – either a U.S. Social Security Number or Individual Taxpayer Identification Number - can submit Federal Tax Form 8233 (Exemption From Withholding on Compensation for Independent Personal Services of a Nonresident Alien Individual) to claim a withholding reduction or exemption. No exemption is available for nonresident aliens who lack a TIN. Nonresident aliens not claiming such an exemption should submit Federal Form W-8BEN (Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding). For more information, refer to IRS Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.

Resident aliens should complete Federal Form W-9 (Payer's Request for Taxpayer Identification Number and Certification) to submit a U.S. taxpayer identification number. Resident aliens with no U.S. taxpayer identification number will be subject to back-up withholding, currently at a rate of twenty-five percent.

3. Federal or State Tax Liens or Levies

JPL may be required to withhold payments in an amount necessary to satisfy tax liens or levies or judgments duly issued against contractors or consultants by cognizant tax or judicial authorities.

Disclaimer: JPL is not liable for amounts incorrectly withheld. However, if JPL determines that amounts have been incorrectly withheld, and provided that such amounts have not been remitted to tax authorities, JPL shall refund such amounts to the contractor/consultant.